

UNITED STATES DEPARTMENT OF AGRICULTURE

In the Matter of: )  
 )  
 ) Docket No.  
 THE NORTHEAST MILK MARKETING ) AO-14-A70-DA-02-01  
 ORDER )  
 )

Virginia Room  
 Embassy Suites Hotel  
 1900 Diagonal Road  
 Alexandria, Virginia

Tuesday,  
 September 10, 2002

The above-entitled matter came on for  
 hearing, pursuant to notice, at 8:30 a.m.

BEFORE: HONORABLE DOROTHEA BAKER  
 Administrative Law Judge

APPEARANCES:

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## P R O C E E D I N G S

8:30 a.m.

1  
2  
3 JUDGE BAKER: Please come to order. My name is  
4 Judge Baker, and I have been assigned to conduct this  
5 hearing.

6 It is a public hearing in which interested  
7 persons may participate. It relates to proposed  
8 amendments to a tentative marketing agreement and order  
9 and has a docket number before the secretary of  
10 Agriculture. It's AO-14-A70-DA dash 0201.

11 In order to assist the participants, I will  
12 review some of the procedural matters applicable to  
13 hearings of this type.

14 They are public hearings, and all persons have  
15 the right to present relevant and material evidence. They  
16 are not adversarial in nature. Nevertheless, judicial  
17 decorum is anticipated.

18 We have a court reporter who is contractually  
19 obligated to stenographically record these hearings. He  
20 is to assure that all exhibits are properly numbered and  
21 stamped. Therefore, if you have exhibits to be offered,  
22 please allow him sufficient time to do so. As set forth  
23 in the notice of hearing, four copies of exhibits are  
24 required for the official record.

1           The government does not furnish copies of the  
2 transcript for distribution. If you wish a personal copy  
3 of the transcript, it is suggested that you make  
4 arrangements with the court reporter at the earliest  
5 possible time. However, the transcript and all exhibits  
6 will be available for examination and copying in the  
7 Office of the Hearing Clerk, United States Department of  
8 Agriculture, South Building, Washington, D.C.

9           I shall now ask representatives of the  
10 government. Will copies be available elsewhere for  
11 examination?

12           MR. STEVENS: Your Honor, in the back of the  
13 room there are copies of the various documents --

14           JUDGE BAKER: Yes. I was speaking of the  
15 transcript of the entire proceeding.

16           MR. STEVENS: Okay.

17           MR. TOSI: Yes. Good morning, Your Honor.  
18 What we've been doing recently and at least for the last  
19 six or seven hearings that we've done, once we've received  
20 the transcript, we post it on the Internet so that it --  
21 it's available to everyone. And we -- and we've been  
22 using the date of when we post the transcript on the  
23 Internet to trigger the deadlines for the submission of  
24 corrections to the record and deadlines for filing briefs.

1                   JUDGE BAKER: Okay. That's a good innovation.  
2 I'm glad to know it. Thank you.

3                   MR. TOSI: Thank you, Your Honor.

4                   JUDGE BAKER: So everyone can look at the  
5 Internet.

6                   Among the more important procedural matters  
7 which I shall request that you follow is that each time  
8 you rise to speak, please state your name, address, and  
9 representation, if any. If you forget to do this, I shall  
10 find it necessary to interrupt you and request that you do  
11 so.

12                   With respect to procedural matters, I shall be  
13 glad to answer them at any time.

14                   The hearing sessions will run from 8:30 in the  
15 morning to approximately 5- or 6:00 in the evening. We  
16 shall have a 15-minute break in mid-morning, an hour for  
17 lunch, and a 15-minute break in the afternoon.

18                   This public hearing is to consider changes in  
19 the Northeast Federal Milk Marketing Order. Proposals  
20 will include establishing marketwide service payments to  
21 offset the costs of balancing the market's class one  
22 needs; establishing year-round shipping standards for  
23 supply plant pool qualification; establishing a standard  
24 that at least two days' milk production of a dairy farmer

1 be physically received at the pool plant before the  
2 balance of production is eligible for diversion;  
3 establishing limits on the amount of milk that a pool  
4 plant may divert; eliminating the split plant feature for  
5 pool supply plants; and making minor changes to reporting  
6 and payment dates.

7 After the initial notice of hearing was  
8 published, the United States Department of Agriculture  
9 announced a supplement to the notice of public hearing  
10 whereby there will be considered an additional proposal  
11 which seeks to amend the unit pooling provision by  
12 specifying that a secondary unit pooled plant must be  
13 located within the marketing area and process at least 60  
14 percent of total producer milk receipt as class one or  
15 class two products.

16 Details of these proposals are set forth in the  
17 notice of hearing published in the "Federal Register" on  
18 Thursday, August 1, 2002, Volume 67, Number 148,  
19 commencing at page 49887. And with respect to that  
20 supplemental notice, that is published in the "Federal  
21 Register," Volume 67, Number 159, Friday, August 16, 2002,  
22 commencing at page 53522.

23 Copies of these "Federal Register"s which  
24 contain the notice of hearing and the proposals to be

1 considered in detail are available in the back of the  
2 room. I would suggest that you obtain a copy so that you  
3 will be better able to follow the proceedings of this  
4 hearing.

5           Proposals numbered one through three were  
6 submitted by the New York Dairy Foods, Inc. Proposal 4  
7 was made by the marketing administrator; the New York  
8 Dairy Foods, Inc.; and Association of Dairy Cooperatives  
9 in the Northeast. Proposals 5, 6, and 7 were made by  
10 Friendship Dairies. Proposal 12 was made by the Northeast  
11 Marketing Administrator. Proposal 13 was made by Dairy  
12 Programs, Agricultural Marketing Service, United States  
13 Department of Agriculture. And Proposal 14 was made by  
14 the New York State Dairy Foods, Inc.

15           Copies of these "Federal Register"s have all  
16 been marked as Exhibit 1 for identification. They are  
17 admitted and received into evidence as Exhibit 1 and 1-A.

18                           (The documents referred to  
19                           were marked for identification  
20                           as Exhibits 1 and 1-A and were  
21                           received in evidence.)

22           JUDGE BAKER: In addition to the "Federal  
23 Register"s setting forth the notice of hearing, there has  
24 also been made available to me certain other data,

1 including a certificate relative to officials notified.  
2 These certificates are dated August 1 and August 16, 2002,  
3 both of which have been signed by Joyce M. McPherson,  
4 docket clerk. Said certificates reflect notification to  
5 the governors of a number of states. These certificates  
6 are identified and admitted into evidence as Exhibit 2 and  
7 2-A.

8 (The documents referred to  
9 were marked for identification  
10 as Exhibits 2 and 2-A and were  
11 received in evidence.)

12 JUDGE BAKER: At this public hearing, all those  
13 who wish to testify and give relevant and pertinent  
14 information will be permitted to do so.

15 At the conclusion of the hearing, I will  
16 certify the record. I have had no part in the formulation  
17 of the proposals, nor do I participate in the corporation  
18 of the disposition of these proposals after I have  
19 certified the record.

20 As previously mentioned, this is a public  
21 hearing that will consider proposals that would amend  
22 certain pooling and related provisions of the Northeast  
23 Order. These proposals previously referenced include  
24 establishing marketwide service payments to offset the

1 cost of balancing the market's class one needs and  
2 modifying the pooling standards of the order.

3 Pooling proposals include establishing year-  
4 round shipping standards for supply plant pool  
5 qualification; adding a touch-base provision that would  
6 establish a standard that at least two days' milk  
7 production of a dairy farmer be physically received at a  
8 pool plant in order to be eligible for a diversion;  
9 establishing limits on the amount of milk that a pool  
10 plant may divert; eliminating the split fund provision;  
11 and revising certain reporting and payment provisions.

12 This administrative action is governed by the  
13 provisions of Section 556 and 557 of Title V of the United  
14 States Code and therefore is excluded from the  
15 requirements of Executive Order 12866.

16 The hearing is called pursuant to the  
17 provisions of the Agricultural Marketing Agreement Act of  
18 1937, as amended, and the applicable rules of practice and  
19 procedure governing the formulation of marketing  
20 agreements and marketing orders.

21 The purpose of the hearing is to receive  
22 evidence with respect to the economic and marketing  
23 condition which relate to the proposed amendments as set  
24 forth in the notice of hearing and any appropriate

1 modifications thereof to the tentative marketing  
2 agreements or the order.

3 As previously mentioned, also there will be  
4 taken evidence to determine whether emergency marketing  
5 conditions exist that would warrant omission of a  
6 recommended decision under the rules of practice and  
7 procedure. Actions under the Federal Milk Order Program  
8 are subject to the Regulatory Flexibility Act. This act  
9 seeks to ensure that within the statutory authority of a  
10 program, the regulatory and informational requirements are  
11 tailored to the size and nature of small business.

12 For the purpose of the act, a dairy farmer or,  
13 more correctly, a dairy farm is a small business if it has  
14 an annual gross revenue of less than \$750,000. And a  
15 dairy products manufacturer is a small business if it has  
16 fewer than 500 employees.

17 Most parties subject to a milk order are  
18 considered as a small business. Accordingly, interested  
19 parties are invited to present evidence on the probable  
20 regulatory and informational impact of these hearings on  
21 small businesses. Also, parties may suggest modifications  
22 of these proposals for the purpose of tailoring their  
23 applicability to small businesses.

24 The amendments to the rules proposed herein

1 have been reviewed under Executive Order 12988, Civil  
2 Justice Reform. They are not intended to have a  
3 retroactive effect. If adopted, proposed amendments would  
4 not preempt any state or local laws, regulations, or  
5 policies unless they present an irreconcilable conflict  
6 with this rule.

7 Witnesses give their testimony upon oath or  
8 affirmation, after which they are subject to cross  
9 examination. Any evidence which is immaterial,  
10 irrelevant, or unduly repetitious will be ruled out of  
11 order if it is not of the sort on which responsible  
12 persons are accustomed to rely.

13 After conclusion of the hearing and at a date  
14 to be announced, all interested parties have the  
15 opportunity to submit briefs which may include proposed  
16 findings of fact based upon the record made here, proposed  
17 conclusions, and a proposed order. Such briefs may be  
18 filed by persons whether or not they have been in  
19 attendance at the hearing.

20 Also, a date to be announced prior to the close  
21 of the hearing is that interested parties may suggest  
22 proposed corrections to the transcript. These should be  
23 submitted in four copies to the Office of the Hearing  
24 Clerk, United States Department of Agriculture.

1           If anyone objects to the admission or rejection  
2 of any evidence or to any other ruling by me at the  
3 hearing, he shall state briefly the grounds thereof and an  
4 automatic exception will follow. Only objections made  
5 before the judge may be relied upon subsequently in the  
6 proceeding.

7           I shall now ask for appearances by the parties,  
8 and I will go around the room to do that.

9           Now, as to who appears on behalf of the Agency.

10          MR. STEVENS: Your Honor, my name is Garrett B.  
11 Stevens. I'm with the Office of General Counsel with the  
12 U.S. Department of Agriculture.

13          Accompanying me here today is Sharlene Deskins,  
14 who is also with the Office of General Counsel.

15          JUDGE BAKER: Thank you.

16          MR. TOSI: Thank you, Your Honor. My name is  
17 Gino Tosi, T-O-S-I. I'm with the Agricultural Marketing  
18 Service, Dairy Programs, USD -- excuse me, Order  
19 Formulation Branch of USDA. And I'm accompanied by three  
20 colleagues.

21          JUDGE BAKER: Thank you, Mr. Tosi.

22          MR. ROWER: Your Honor, I'm Jack Rower, R-O-W-E  
23 -- E-R. And I'm with Dairy Programs also.

24          JUDGE BAKER: Thank you, Mr. Rower.

1 MR. RICHMOND: Good morning, Your Honor. Bill  
2 Richmond, R-I-C-H-M-O-N-D, USDA Dairy Programs also.

3 JUDGE BAKER: Thank you, Mr. Richmond.

4 MS. FEUILLET: Good -- good morning. My name  
5 is Erin Feuillet, F as in Frank-E-U-I-L-L-E-T. I'm with  
6 Dairy Programs.

7 JUDGE BAKER: Thank you very much. Does that  
8 conclude those who are appearing on behalf of the  
9 Department?

10 (No response)

11 JUDGE BAKER: It apparently does. Are there  
12 any representatives here from local, state, county  
13 governments who wish to enter their appearance?

14 (No response)

15 JUDGE BAKER: Let the record reflect that there  
16 is no response.

17 I shall now go around the room for appearances  
18 by others, and I'll take the desk immediately behind Mr.  
19 Stevens.

20 MR. ENGLISH: My name is Charles English. I'm  
21 with the law firm of Thelen Reid and Priest, 701  
22 Pennsylvania Avenue, Northwest, Suite Hundred -- 800,  
23 Washington, D.C., 20004. I'm representing New York State  
24 Dairy Foods, Inc. for this proceeding.

1           With me representing the company also are Wendy  
2           Levine from Thelen Reid and Priest, and then as  
3           consultants Dave Arms and Carl Conover.

4           And then there will be individual company  
5           representatives: Bill Fitchett, Jim Buelow, and Rich  
6           Miller.

7           JUDGE BAKER: Thank you very much, Mr. English.  
8           And these other individuals whom you mentioned will always  
9           identify themselves when they get up --

10          MR. ENGLISH: Of course, Your Honor. Yes.

11          JUDGE BAKER: Thank you.

12          MR. ENGLISH: I will probably be doing the  
13          primary speaking from the microphone here. Others will be  
14          speaking from the witness stand.

15          JUDGE BAKER: Very well. Thank you, Mr.  
16          English.

17          Mr. Rosenbaum?

18          MR. ROSENBAUM: Yes. Steven -- Steven  
19          Rosenbaum with the law firm of Covington and Burling, 1201  
20          Pennsylvania Avenue, Northwest, in Washington, D.C. I am  
21          representing the International Dairy Foods Association.  
22          And with me is Dr. Robert Yonkers of the association.

23          JUDGE BAKER: Thank you very much. Is there  
24          anyone else in this tier who wishes to enter his

1 appearance?

2 (No response)

3 JUDGE BAKER: Is there anyone in the back of  
4 the room over here?

5 (No response)

6 JUDGE BAKER: Let the record reflect that there  
7 is no response. We shall now start on the left-hand side  
8 of the room.

9 Yes, Mr. Beshore?

10 MR. BESHORE: Good morning, Your Honor. Marvin  
11 Beshore, B-E-S-H-O-R-E, an attorney. My office is 130  
12 State Street in Harrisburg, Pennsylvania. I'm here  
13 representing the Association of Dairy Cooperatives in the  
14 Northeast, which consists of eight cooperatives:  
15 AgraMark, Inc.; Dairy Farmers of America, Inc.; Dairy  
16 League Cooperative, Inc.; Land O' Lakes, Inc.; Maryland  
17 Virginia Milk Producers Cooperative Association, Inc.;  
18 Oatka Cooperative, Inc.; St. Albans Cooperative Creamery,  
19 Inc.; and Upstate Farms Cooperative, Inc.

20 We are the proponents of several proposals in  
21 the hearing and we will have a number of witnesses who  
22 we'll identify at -- at the time. And we'll also be  
23 calling Dr. Charles Ling from the Department as a -- as a  
24 witness.

1 JUDGE BAKER: Very well. Thank you, Mr.  
2 Beshore.

3 Is there anyone else who wishes to enter his  
4 appearance? Mr. Vetne?

5 MR. VETNE: Good morning. My name is John  
6 Vetne, V as in Victor-E-T-N-E. I'm an attorney. My  
7 offices are at 15 Powow Street in Amesbury, Massachusetts.  
8 I'm entering an appearance on behalf of Friendship  
9 Dairies.

10 With me is Warren Shanback of Friendship  
11 Dairies.

12 JUDGE BAKER: Thank you, Mr. Vetne.

13 Is there anyone behind you who would like to  
14 enter his appearance?

15 (No response)

16 JUDGE BAKER: Let the record reflect that  
17 there's no response. As time goes by, if anyone wishes to  
18 enter his appearance, please let me know.

19 I have previously indicated data which I have  
20 preliminarily to this matter, namely the notice of hearing  
21 and certificate of officials notified. I understand that  
22 there is usually additional data in the form of  
23 notification to the newspapers and interested parties. If  
24 anyone has that, would they produce it now, please?

1 MR. STEVENS: Yes, Your Honor. We have -- we  
2 have press releases for each of the notice of hearings --

3 JUDGE BAKER: Thank you.

4 MR. STEVENS: -- a copy of those and copies to  
5 the reporter.

6 JUDGE BAKER: Thank you.

7 MR. STEVENS: We have -- we have identified  
8 -- (inaudible) -- certificates for officials --

9 JUDGE BAKER: Yes.

10 MR. STEVENS: -- make sure we get them all.

11 JUDGE BAKER: Very well.

12 (Pause)

13 MR. STEVENS: Your Honor, there's one  
14 additional document, which is the determination of mailing  
15 of the notice of hearing to interested parties signed by  
16 the market administrator which we would like entered. And  
17 I have -- I have sufficient copies of that.

18 JUDGE BAKER: Very well. Would you give me a  
19 copy and the reporter a copy and we'll get them identified  
20 and entered.

21 MR. STEVENS: Okay. So you need the notices.

22 (Pause)

23 JUDGE BAKER: Very well. Thank you.

24 (Pause)



1 not -- is not our proposal. We do --

2 JUDGE BAKER: Not your proposal. That's --  
3 that's true.

4 MR. BESHORE: We do have a suggestion --

5 JUDGE BAKER: I'm sorry. Yes.

6 MR. BESHORE: -- that I'd like -- like to make  
7 for -- for the order of proceeding.

8 JUDGE BAKER: All right.

9 MR. BESHORE: Proposal 7, which is one of our  
10 proposals, is a proposal for marketwide service payments.  
11 And it is the proposal which is going to involve the  
12 greatest number of witnesses and the most complex data and  
13 discussion. We would suggest that it would make a lot of  
14 sense to take that proposal first at the hearing while  
15 everyone's fresh and -- and able to delve -- delve into  
16 the subject matter well. And when that's completed,  
17 proceed with the other -- with the other proposals, some  
18 of which -- a number of which go together and -- in  
19 various groupings. They all generally relate to either  
20 administrative provisions of the order or to pooling  
21 provisions of the order.

22 I've spoken with a number of the other -- other  
23 participants with respect to this suggestion. WE don't  
24 have unanimous agreement but there's -- there's some

1 consensus at least that this may -- may be a good way to  
2 proceed. And we'd like to suggest that to Your Honor.

3 JUDGE BAKER: Very well. Yes? Yes, Mr. Vetne?

4 MR. VETNE: Yes. John Vetne for Friendship  
5 Dairy. Speaking as the non -- non-unanimous party to whom  
6 Marvin had some contact, I -- I agree that marketwide  
7 service issues should be considered in one segment of the  
8 hearing and that pooling issues should be considered in  
9 another.

10 I also think it doesn't make a lot of sense to  
11 isolate individual pooling proposals. They're all  
12 interrelated and I -- and they should be heard in -- in  
13 one segment, not necessarily any particular order but as  
14 is convenient for the witnesses.

15 However, my suggestion was to put marketwide  
16 services at the end when everybody is tired and -- and do  
17 pooling when everybody's fresh. In -- in part because my  
18 client has -- has a conflict at the end of the week and --  
19 as do I. Mine can be rearranged with some difficulty.

20 But as a fall back, we think -- Marvin  
21 suggested this -- to -- to accommodate my schedule as well  
22 as Warren Shanback's, if -- if marketwide services goes  
23 first, then we would settle with having Warren goes  
24 towards the beginning of the pooling parade of witnesses

1 early on Thursday or late Wednesday, whenever it comes.

2 JUDGE BAKER: Very well. Yes, Mr. Rosenbaum?

3 MR. ROSENBAUM: Your Honor, we -- we do not  
4 oppose Mr. Beshore's suggestion that marketwide service  
5 payments go first. However, there may be some witnesses  
6 who want to testify about Proposal 7 who aren't -- don't  
7 live in the area and won't be here today and possibly not  
8 even tomorrow. And so I would think it only fair that if  
9 someone shows up on Thursday, for example, morning to  
10 testify on Proposal Number 7 that they be permitted to do  
11 so.

12 I don't think Mr. Beshore objects to that, but  
13 I -- I want that -- I think that should be part of the  
14 understanding.

15 Our principal witness is here and we would go  
16 forward at the appropriate time ourselves. But there are  
17 individual members of the association who are not --  
18 not here at this time.

19 JUDGE BAKER: Very well. Thank you, Mr.  
20 Rosenbaum.

21 MR. ENGLISH: Charles English for New York  
22 State Dairy Foods, who has Proposals 1, 2, and 3. And we  
23 are certainly prepared to put those proposals after seven.  
24 Again, I think Mr. Rosenbaum's point is -- is well taken.

1 There may be some witnesses. I would expect them not to  
2 be the most significant witnesses in terms of the time and  
3 complexity of their testimony. They're going to be really  
4 significant in that their interests are -- are  
5 dramatically affected.

6 But I would think that in terms of the  
7 significant complex witnesses for Proposal 7, I think most  
8 of those are already in the room. If not -- I think -- I  
9 think they are.

10 And then I certainly am prepared with the  
11 caveat that at some point some of the -- the witnesses on  
12 Proposal 7 are businessmen who may have very, very --  
13 statements on the pooling issues or reporting issues and  
14 they might make those all at the same time. Again, they  
15 are not the consultant economist witnesses and I'm sure  
16 that -- that that can be accommodated.

17 But I -- I think that it makes a lot of sense  
18 as the proponents of Proposals 1, 2, and 3 to put those  
19 and group those as Mr. Beshore has suggested. There's  
20 administrative proposals, there's pooling proposals, and  
21 to have those come after Proposal 7 with the caveat that  
22 Mr. Shanback has a conflict and can't stay 'til Friday but  
23 we find a way of -- of accommodating him.

24 JUDGE BAKER: Very well. Thank you, Mr.

1 English.

2 As most of you know, it's my goal, but everyone  
3 who wishes to testify in these proceedings can do so.  
4 Obviously, there are conflicts in schedules which everyone  
5 has. This hearing was noticed, I believe, about August  
6 the 1st. And hopefully everyone has rearranged his  
7 schedule so that he can participate in it.

8 And certainly, Mr. Rosenbaum, anyone who shows  
9 up and wants to testify with respect to Proposal 7 can do  
10 so.

11 We are now ready to -- we will proceed on  
12 Proposal 7 after we ascertain if the Government has any  
13 general data they wish to offer at this time.

14 MR. STEVENS: Might I say in regards to the  
15 scheduling, I just would like to the record to reflect  
16 that, certainly, as far as the Department is concerned,  
17 and I -- I think I speak for the group also, that if there  
18 are dairy farmers who are here and want to testify that  
19 they should be accommodated with regard to their schedule  
20 as best as can be done. And any requests that the -- that  
21 the -- that that be taken into account.

22 JUDGE BAKER: We -- we -- we shall do so, Mr.  
23 Stevens, and there has never been a time when any witness  
24 who wanted to testify has not been permitted to testify in

1 any hearing in which I presided. That shall continue to  
2 be the rule.

3 MR. STEVENS: Thank you, Your Honor.

4 JUDGE BAKER: You're welcome. Now, does AMS  
5 have any general data which it wishes to offer?

6 MR. STEVENS: Yes, we do, Your Honor.

7 JUDGE BAKER: Do you want to proceed?

8 MR. STEVENS: We'd like to call Peter  
9 Fredericks to the stand.

10 JUDGE BAKER: Very well. Sir, would you step  
11 forward?

12 Whereupon,

13 PETER FREDERICKS

14 having been first duly sworn, was called as a witness  
15 herein and was examined and testified as follows:

16 JUDGE BAKER: Would you be seated, please?

17 Please spell your name for the court reporter?

18 THE WITNESS: Peter Fredericks, F-R-E-D-E-R-I-  
19 C-K-S.

20 DIRECT EXAMINATION

21 BY MR. STEVENS:

22 Q Mr. Fredericks, by whom are you employed?

23 A I'm employed by the Northeast Market  
24 Administrator's Office, Federal Order Number One.

1           Q     Could you give us a brief description of your  
2     duties?

3           A     I'm an assistant to the market administrator at  
4     the office.  I'm responsible for the -- the preparation of  
5     the statistical reports and market information reports  
6     that are -- that are released by the Northeast Market  
7     Administrator's Office.

8           Q     How long have you been employed by the market  
9     administrator?

10          A     I've been employed by the Northeast Market  
11     Administrator's Office since its inception in January of  
12     2000, and prior to that, to one of the predecessor orders,  
13     the former New York-New Jersey Order, in June of 1993.

14          Q     And -- and what was your employment prior to  
15     that time?

16          A     Prior to that time I spent some time working  
17     for a supermarket firm in upstate New York.  And prior to  
18     that I was -- worked for the New York State Senate in the  
19     state of New York.

20          Q     All right.  In your capacity in the market  
21     administrator's office, were you contacted -- or did you  
22     prepare certain documents for this hearing?

23          A     Yes, I did.

24          Q     And did you bring them with you today?

1           A     Yes, I did.

2           Q     Are they available at the back of the room for  
3 the participants to use?

4           A     Yes, they are.

5           Q     Could you -- could you just describe generally  
6 for us a document that you -- the document that you have  
7 brought?

8           A     The document is entitled, "The Compilation of  
9 Statistical Material and Requested Data." There is an  
10 appendix -- index inside the first cover.

11                     The first part of it is general statistical  
12 information. That is released by our office on a regular  
13 basis. And the second part of it is a series of special  
14 data requests from -- from three different entities that  
15 requested data for us.

16                     MR. STEVENS: Your Honor, I would like this  
17 marked for identification. I believe it's Exhibit 5, is  
18 it?

19                     JUDGE BAKER: That's correct, Mr. Stevens. It  
20 shall be so marked.

21                                     (The document referred to was  
22 marked for identification as  
23 Exhibit 5.)

24                     BY MR. STEVENS:

1           Q     Now, in the -- in the preparation of this  
2 document, did you also prepare an errata sheet or a sheet  
3 of corrections?

4           A     Yes, I did. And the -- that is also entitled,  
5 "Corrections to Compilation of Statistical -- Material and  
6 Requested Data." It's a one-page sheet that is also on  
7 the back table.

8           MR. STEVENS: Your Honor, could I have that  
9 marked for identification as 5-A, maybe? Or whatever -  
10 - whatever number you would like to --

11           JUDGE BAKER: Very well. That's the errata  
12 sheet?

13           MR. STEVENS: It is. And it's --

14           JUDGE BAKER: Very well. That shall be marked  
15 as 5-A.

16   (The document referred to was  
17 marked for identification as  
18 Exhibit 5-A.)

19           BY MR. STEVENS:

20           Q     Now, in order to assist the parties, would you  
21 -- would you just -- I think -- I'm assuming that the  
22 parties who are interested have copies of this. And if  
23 you could go quickly through the errata sheet, I think  
24 that would help people to understand what the -- what the

1 -- what changes have been made to the document before we  
2 testify concerning it.

3 A Okay. The first correction, on pages one, two,  
4 and three, there's a --

5 Q Let me interrupt you just -- do you have an  
6 extra copy of that -- of the errata sheet? Okay. Just  
7 give us a minute to get copies of it --

8 A I'm sorry.

9 Q -- if you will.

10 (Pause)

11 BY MR. STEVENS:

12 Q All right. Could you go through the  
13 corrections?

14 A Okay. Number one, on pages one, two, and  
15 three, there's a -- a missing footnote that references to  
16 a category called "Other States" which indicates the  
17 states that are included in that category, the states of  
18 Colorado, Idaho, Kentucky, Michigan, Minnesota, Nevada,  
19 North Carolina, Rhode Island, South Carolina, Tennessee,  
20 Utah, Wisconsin, and West Virginia. Were states that were  
21 included in that category some time during the period of  
22 January 2000 through July 2002.

23 On page -- number two, page 22, the tables  
24 called "July 2002 Pool Handler Listing." McNamara --

1 McNamara, Patrick doing business as McNamara's Dairy.  
2 Qualified plant status should be a producer handler, not  
3 exempt distributing plant as it is reported on the  
4 document.

5 On page 22 of the July 2002 approved handler  
6 listing, Perrydale Farm's qualified status should be  
7 exempt distributing plant, not a producer handler as  
8 listed on the document.

9 On page 22, July 2002 pool handler listing,  
10 Morningstar Foods plant in Gustine, California should be  
11 removed from this list.

12 Number five, on page 31 of the July 2002 pool  
13 handler map, Map Number 90 on the map showed a pool --  
14 should be a pool distributing plant symbol, not a  
15 partially regulated distributing plant symbol.

16 Number six, on page 33 of the July 2002 pool  
17 handler map index, -- Oakhurst Dairy's qualified status  
18 should be pool distributing plant, not a PR, partially  
19 regulated, plant.

20 On page 33, July 2002, pool handler map index,  
21 Land O' Lakes 9(c) cooperative, plant location should be  
22 Carlisle, Pennsylvania.

23 On page 34 of the July 2002 pool handler map  
24 index, Stearns Dairy doing business as Mountain Dairy

1 should be spelled "Stearns," S-T-E-A-R-N-S.

2 Number nine, on Appendix 2-A, pages 49, 50, and  
3 51, the footnote should be, "Bulk milk includes bulk whole  
4 milk, bulk nonfat milk, bulk raw milk, bulk cream, bulk  
5 skim condensed, and bulk concentrated milk."

6 Number 10, Appendix 2-B on page 52, bulk milk  
7 includes bulk whole milk, bulk nonfat milk, bulk raw milk,  
8 bulk cream, and bulk skim condensed.

9 Number 11, Appendix 2-C on page 53, bulk milk  
10 includes bulk whole milk, bulk nonfat milk, bulk raw milk,  
11 bulk cream, and bulk skim condensed.

12 And number 12, Appendix 9, page 80, the title  
13 of the table is changed to, "Diversions from Northeast  
14 Order Handlers to Other Order Pool Plants and Diversions  
15 from Other Orders to Northeast Order Pool Plants."

16 Number 13, Appendix 10 on page 81, the  
17 corrected spelling of St. Albans Cooperative Creamery.  
18 "Cooperative is spelled incorrectly."

19 And the last one, Appendix 14 on page 85, the  
20 pound symbol at the "Total Whole Milk Powder and Other  
21 Order" column is a typographic error and does not apply to  
22 anything on that table.

23 Q Now, on that last item, would you like to put  
24 an errata sheet on it for the errata sheet?

1           A     Number 10 should be Number 14.

2           Q     All right. Let's -- let's go through the  
3 document, if you will. There is a table of contents, but  
4 I'd like you to start at page 1. Describe what that  
5 document is?

6           A     Page one is a table that shows the proceeds of  
7 producer milk by state for the period of 2000 to 2002,  
8 July 2002. Okay. It breaks out the different states that  
9 have producers in the order and the volume of producer  
10 milk from each of those states.

11          Q     Okay. Show us how it works for a particular  
12 year and month. I see that it -- it has columns for the  
13 states, it has a vertical column with the months, and a  
14 total --

15          A     Okay.

16          Q     -- which represents years, I believe. Years  
17 starting with 2000 and going to 2002.

18          A     I'll start with the top series of numbers.  
19 January 2000 for the state of Connecticut, go across to  
20 the right. January 2000 of the Connecticut, there's four  
21 -- there is producer receipts from the -- from Connecticut  
22 producers was 41,854,412 pounds for the January 2000.  
23 January 2001, the receipts for Connecticut were  
24 38,883,834. For 2002, January 2002 for Connecticut,

1 37,845,823.

2 State of Delaware, January 2000, receipts --  
3 producer receipts were 15,293,605. January 2001 for the  
4 state of Delaware, producer receipts 11,384,587. January  
5 2002 for Delaware producer receipts, 14,402,720.

6 Q Okay. So --

7 A Et cetera.

8 Q -- so -- and the other columns are similar for  
9 the other states?

10 A That's correct.

11 Q And you have totaled each year?

12 A Totaled each year and the bottom, correct.

13 Q And what's the significance of the footnotes?

14 A The footnote -- two notes. One, this is a --  
15 this is dated as reported of handlers at the time of the  
16 pools. And the second footnote is made -- mentioned as  
17 restricted data. Restricted data means that if there are  
18 less than three handlers or plants reporting producer  
19 information in this particular state, we do not reveal  
20 that for purposes of confidentiality. That data would be  
21 then lumped into the "Other States" category, combined.

22 Q So the -- confidentiality is that with -- with  
23 less than three reported it, they would know what the  
24 others' numbers were? They could figure that out?

1           A     They could determine that perhaps, correct.

2           Q     All right.  Could you go to page two, please,  
3     and describe what that document is?

4           A     Page two reports the number of producers by  
5     state, again for the period of 2000 -- 2000 to July of  
6     2002.  The number of pool producers from each of the  
7     respective states.

8           Q     And reading across, it lists the states.  And  
9     reading down, it reads -- it reads the months for these  
10    years?

11          A     That's correct.

12          Q     What's the significance of the footnote?  
13    Footnotes, I should say.

14          A     Footnotes are the same as they were on the  
15    first table.  That is that information as reported at time  
16    of the calculation of monthly price, pool time.  And the  
17    second one is that there's restricted data for -- for  
18    states if there's less than three handlers, three plants  
19    which are lumped together in the "Other States" category.

20          Q     So why don't you -- could you just read across  
21    the top line for Connecticut and maybe Delaware just to  
22    describe how it works?

23          A     In January 2000, 229 producers from the state  
24    of Connecticut.  In January 2001, there are 209 producers

1 from the state of Connecticut pooled on the order. In  
2 January of 2002, there are 195 producers from the state of  
3 Connecticut.

4 January 2000 from the state of Delaware, 107  
5 producers. January 2001 from the state of Delaware, 85  
6 producers. January 2002, 90 producers in the state of  
7 Delaware.

8 Q All right. And the -- and the rest of the  
9 document reflects that for the other states for the period  
10 of time enumerated there?

11 A That is correct.

12 Q Let's go to page three. What's represented  
13 there?

14 A It's a table entitled the "Daily Average Output  
15 of Producer Milk per Farm by State for the period of  
16 January 2000 to July 2002." I'll tell you how it's  
17 calculated.

18 Q All right.

19 A The -- this number is calculated by taking the  
20 -- the information from Table 1, the total volume for the  
21 state of Connecticut, dividing it by the information in  
22 Table 2 for this respective month --

23 Q All right.

24 A -- of number of farms, divided by the number of

1 days in the month. So for January of 2000, state of  
2 Connecticut, the daily average output per farm following  
3 that method was 5896 pounds of milk. For January 2001,  
4 state of Connecticut's daily average output per farm was  
5 6002 pounds. January 2002, Connecticut, 6261 pounds.

6 Q Okay. And the -- and the other states are  
7 represented for the months enumerated?

8 A That's correct.

9 Q And what's the significance of the footnotes?

10 A The same as the prior two tables. That is,  
11 information based on report at pool time and restricted  
12 data, that is less than three handlers or plants, included  
13 in the "Other States" category for averaging purposes.

14 Q I direct your attention to page four. What  
15 -- what's represented there?

16 A Page four, entitled "Producer Prices and  
17 Producer Production Summary for the Period of January 2000  
18 through July 2002." There are several different columns  
19 of data here, and I'll start with them on the left and go  
20 through them.

21 The first column is the "Statistical Uniform  
22 Price Announced at the Suffolk County, Massachusetts,  
23 Boston, Zone in the Northeast Order."

24 The second column -- January 2000, for

1 instance, that number was \$12.35.

2 The second column, "Producer Price  
3 Differential," is the producer price differential  
4 applicable in the Suffolk County Massachusetts zone. For  
5 January 2000, that number, for example, was \$2.30.

6 The next three columns, "Butter Fat Price,"  
7 "Producer Protein Price," and "Other Solids Price," refer  
8 to the prices that farmers, producers would have received  
9 for their components of butter fat, protein, and other  
10 solids during that point in time. So for example, in  
11 January of 2000, the producer butter fat price was 0.9366  
12 cents per pound, dollars per pound. Protein price was  
13 2.1677 dollars per pound. And the other solids price is  
14 0.0503 dollars per pound.

15 The next column, the "Number of Producers --  
16 The Number of Producers Pooled on the Order" during that  
17 month and time. The first number there, 18,009, indicates  
18 for January of 2000 there were 18,009 producers pooled on  
19 the order that month.

20 The following -- next column, "Average Daily  
21 Delivery," is the average daily delivery of -- of all  
22 those farms calculated in a method that I kind of referred  
23 to before, which is basically -- which is taking the total  
24 volume of milk pooled, divide it by the 18,0009, divide it

1 by the number of days in the month, to come up with 3843  
2 pounds daily average production.

3 Remaining three columns, "Butter Fat," "True  
4 Protein," and "Other Solids" with the average component  
5 test for the entire pool for that month and time. For  
6 example, January 2000, the average butter fat test was  
7 3.79 percent. The average true protein was 2.99 percent  
8 for January 2000. The average other solids for January  
9 2000 was 5.59 percent.

10 Q All right. You've already explained the  
11 footnote?

12 A Yes, I have.

13 Q Page five, could you explain what's contained  
14 there?

15 A Page five, entitled "Producer Receipts by  
16 Classification for the period January 2002 through January  
17 -- to July 2002." This is the assigned classification at  
18 -- at pool time, and it shows the volume of milk at pool  
19 time in the various classes and the total -- total  
20 receipts at that time of the pool. For instance, January  
21 2000, Class 1 pounds assigned to Class 1 were 900 million  
22 -- 905,503,608, representing 42.2 percent of the total  
23 pool receipts.

24 Class 2 volume for January 2002, for example,

1 was 316,772,976, or 14.8 percent of the total -- total  
2 pool receipts.

3 The Class 3 volume was 587,010,192, or 27.4  
4 percent of the total pool receipts.

5 The Class 4 volume was 336,299,091, again for  
6 January 2000, representing 15.6 percent of the total  
7 receipts.

8 The total pool receipts for January 2000 in the  
9 Northeast Order was 2,145,585,867.

10 And again, there's a footnote which mentions  
11 that this is reported at time of calculation of the  
12 monthly statistical price.

13 Q And for each year and for part -- partial year  
14 2002, there's a total and an average, is there not?

15 A That's correct.

16 Q And that would be represented at the bottom of  
17 each of the columns?

18 A That's correct.

19 Q Moving to page six, could you describe what's  
20 contained there?

21 A Page six, entitled, "Class 1, 2, 3, and 4  
22 Prices and Advanced Pricing Factors of Suffolk County,  
23 Massachusetts, Boston for the period January 2000 through  
24 September 2002." There's a number of different figures on

1 this table, and I will go through them group by group.

2 All this information is information that has  
3 been -- previously released -- released by office and  
4 price announcements available on our Web pages, available  
5 to producers, handlers, et cetera.

6 The first set of numbers, the Class 1 mover  
7 -- price mover and advanced pricing factors are factors  
8 that are used to determine the -- the base Class 1 price  
9 for that month, the base class -- base skim price.  
10 There's a butter fat factor in the January 2000 that was  
11 0.9854. There's a Class 3 skim milk price of \$6.57. A  
12 Class 4 skim price of \$7.72. And the base skim price for  
13 that month was \$7.72. That is the higher of the Class 3  
14 or Class 4 skim price.

15 The next three numbers under the Class 1 price  
16 heading, there's a skim fat -- skim value of \$10.97 on an  
17 hundredweight basis, butter fat price of \$1.1079, and a  
18 butter -- and a combined price at 3.5 percent butter fat  
19 of \$14.15.

20 The next four figures under the Class 2 price,  
21 there's a butter fat factor or price of \$0.9436 per pound.  
22 Nonfat solids are \$0.9356 per pound. A skim milk price of  
23 \$8.42, dollars per hundredweight. And a Class 2 price at  
24 3.5 percent butter fat of \$11.43.

1           The next five numbers under the Class 3 price  
2 heading, there's a butter fat value of 0.9366, a protein  
3 price of point -- of two dollars, 0.1677 dollars per  
4 pound. Other solids, 0.0503 on a dollars per pound basis.  
5 There's a skim milk -- skim price of \$7.02 at dollars per  
6 hundredweight. There's a Class 3 price of 3.5 percent  
7 butter fat of \$10.05.

8           The next four prices together under the Class 4  
9 price heading, there's a butter fat factor of \$0.9366 per  
10 pound. Nonfat solids, \$0.8574 per pound. A skim milk  
11 price of \$7.72 per hundredweight, and a Class 4 price at  
12 3.5 percent butter fat of \$10.73.

13           Section 1050-A through O of the order spells  
14 out the method of calculation of these prices.

15           Q     Each year is averaged and the partial year 2002  
16 is averaged?

17           A     That's correct.

18           Q     What's the significance of the footnote?

19           A     The footnote announces that these prices do not  
20 include the milk promotion processor assessment or the  
21 Northeast Dairy Compact Over Order Obligation at the time  
22 that that was in effect or the market administrator's  
23 administrative assessment.

24           Q     All right. I direct your attention to page

1 seven through 18, I believe. What's contained in those  
2 pages?

3 A These tables entitled, "Plant Classification  
4 Information," start off with year 2000 and work through  
5 2002 information. It indicates the name of the -- of the  
6 plant and the status of the plant. That is, looking at  
7 the first -- first -- page seven information, Pooled --  
8 Plants, as you go through you'd see other classifications  
9 of plants. Indicates what city the plant is located in,  
10 the state, the Class 1 differential for that plant.

11 And if there's a "one" in the -- filled in  
12 under the month, that means that -- they were that status  
13 of plant during that point in time. If there's a blank in  
14 an area, that means they were not that type of plant  
15 during the month. For example, on page seven, look down  
16 at the -- the third entry there, Christianson Dairy, a  
17 company in North Providence, Rhode Island. You notice  
18 that it's blank under the month of July. If you turn over  
19 to page nine, under the "exempt distributing plant"  
20 heading, the third entry down, Christianson's Dairy, North  
21 Providence, Rhode Island, there's a "one" in the July box.  
22 They were an exempt distributing plant during that month.

23 Q This table operates in that fashion for -- for  
24 the period of time reported, 2000, 2001, and there's a

1 partial 2002?

2 A That's correct.

3 Q All right. I direct your attention to page 19.  
4 What's contained on that page?

5 A Page 19 is a list of cooperatives with  
6 producers pooled on the Northeast Order as the month of  
7 July 2002. It lists the -- the name of the cooperative.  
8 And there is a footnote that indicates those cooperatives  
9 that do not have a USDA Capper Volstead voting  
10 determination.

11 Q All right. I direct your attention to page 20.  
12 What's contained on page 20?

13 A Page 20 is our pool handler listing for the  
14 month of July 2002. It's a snapshot of one month in time.  
15 This is information that we publish monthly and is put up  
16 on our Web page. It lists a number of -- of -- I'll go  
17 through it from left to right.

18 Plant ID is actually an internal number that we  
19 use for internal purposes. The next column is the name of  
20 the plant or the name of the -- the handler. The third  
21 column over, "Qualified Status," is -- is noted whether  
22 it's -- what the qualified status of this is and those --  
23 those --

24 Q The footnote. Does the footnote describe what

1 the -- what that -- what those -- those letters mean?

2 A Yes, it does.

3 Q Okay.

4 A The next column, "Plant Location," is the  
5 location of the plant. The next column is the state of  
6 the -- the plant is operated in. And the county of the  
7 state that the plant is operated in.

8 "FIPS Code" is a -- is a -- is a geographical  
9 identification indicated there in the next code.

10 The plant differential is the differential that  
11 exists for that plant in that county.

12 And adjustment from the base differential is --  
13 is the amount that this differential for this existing  
14 plant is -- how -- how much lower it is from the base  
15 differential of the Northeast Order.

16 Q And this -- this table runs from page 20 to 24  
17 and describes July 2002?

18 A Correct.

19 Q Let me direct your attention to page 25.  
20 What's contained there?

21 A Page 25, entitled, "The Northeast Order Non-  
22 Pool and Other Order Pool Plant List," lists plants that  
23 were classified as non-pool or -- or plants that received  
24 Northeast Order milk.

1           The first column, again, "Plant ID," is an  
2 internal number that we use for accounting purposes.

3           The second column lists the name of the plant.

4           The third column, "Qualified Status."

5           Q    Is that -- that described by the footnote, the  
6 number having significance identified in the footnote?

7           A    Yes, the footnote identifies the status of the  
8 plant.

9           The next column, "Plant Location," is the -- is  
10 the geographic location of the plant, followed by what  
11 state it is in as well as the county.

12           Following column there, the "FIPS Code," again,  
13 is a geographic combination -- code used to identify the  
14 location on a county basis.

15           "Plant Differential" is the following column  
16 for that applicable plant.

17           And the -- the last column over is "Adjustment  
18 from the Base Differential." To take an example, the  
19 first one, Aldrich Dairy, the plant differential for that  
20 plant is \$2.10. That is \$1.15 less than the base  
21 differential of the Northeast Order.

22           Q    And that table runs for how many pages? It  
23 runs -- it's just a one-page table?

24           A    It runs --

1 Q It runs for --

2 A -- page 30.

3 Q This is for July of 2002?

4 A Just one month in time, July 2002.

5 Q All right. Let me direct your attention to  
6 page 31. Tell us what's contained on that page?

7 A This page is a map of the Northeast Marketing  
8 area pool handler locations for the month of June 2002.  
9 There's -- there are symbols on the map that correspond to  
10 the -- the symbols underneath that title indicating the  
11 type of plant.

12 Q Okay. What does the shaded area represent?

13 A The shaded area represents the defined  
14 marketing area of the Northeast Order.

15 Q And the -- the symbols are identified on the  
16 page what the various symbols mean?

17 A Yes, they are.

18 Q And what's the significance of the footnote?

19 A This map -- the footnote indicates the handlers  
20 within the primary supply region of the Northeast  
21 Marketing area, this area. There are additional pool and  
22 distributing supply plants located at this point in time  
23 outside of this geographic area representing this map. We  
24 just simply didn't have the ability to put a map of the

1 U.S. up on a --

2 Q So it has additional pool distributing and pool  
3 supply plants located in other states: Minnesota, Utah,  
4 and Wisconsin?

5 A That's correct.

6 Q Now, this -- the numbers are reflected on the  
7 following table, are they not?

8 A That's right. It's an index.

9 Q Okay. So using this map, then going to the  
10 next page, to 32, 33 through 35, you can identify by  
11 number what -- what the plants -- well, you tell us what  
12 you can identify?

13 A Okay. Taking the first one, page 32, the first  
14 entry there, the number "one" on the map corresponds with  
15 the number "one" on the plant map itself. The index  
16 number corresponds to the number "one" on the map.

17 The next column over there is the qualified  
18 status of the plant. That time it was the pool supply  
19 plant. I'm looking at the first one.

20 Q Right.

21 A The plant's name is AgraMark. The location was  
22 West Springfield. The plant -- in Massachusetts. The  
23 differential at that point at the plant was \$3.00 and the  
24 adjustment for the base differential is 3.25 -- I'm sorry.

1 It was 25 cents from the -- from the base differential.

2 Q Okay. And you can do that for each of the  
3 numbers and the symbols there based on -- using the -- the  
4 information on page 32 through 35?

5 A That's correct.

6 Q And you've identified the various -- the -- the  
7 qualified status with a footnote, have you not?

8 A Yes. The qualified status is identified in the  
9 bottom.

10 Q The code -- the -- the -- the letters refer to  
11 a specific type of plant or farm or whatever is referred  
12 to there?

13 A That -- that's correct.

14 Q Okay. Let me direct your attention to page 36.  
15 Tell us about what's contained there?

16 A This is entitled, "The Northeast Marketing Area  
17 Non-Pool Manufacturing and Other Order Pool Plant  
18 Locations for the Month of December 2001." Again, it has  
19 symbols on the map of these other types of plants. Pool  
20 manufacturing and other order pool plants.

21 Q Now, the table that follows from page 37 to  
22 page 41, similarly to the -- to the previous description,  
23 this -- this describes the -- the numbers correspond to a  
24 plant name and a location on the -- on the map on page 36?

1 A That is correct.

2 Q Give us an example of that, would you?

3 A An example would be --

4 Q Take -- take the first one.

5 A Okay. Number one, Plant Map Number One,  
6 qualified status is a five, non-pool manufacturing. The  
7 plant name is Aldrich Dairy. The location is Verdonia,  
8 Pennsylvania, the state of Pennsylvania. Differential of  
9 2.10. The adjustment from the base differential was a  
10 negative \$1.15. And that, again, would have been located  
11 on the number "one."

12 Q Am I correct in assuming that that's outside  
13 the defined marketing area?

14 A Yes, it is.

15 (Pause)

16 BY MR. STEVENS:

17 Q And the footnotes -- the footnote on the table  
18 -- on the various tables, page 37 through 41, describes  
19 the type of plant?

20 A That is correct.

21 Q Let me -- let me bring you back to the -- to  
22 the map for a second on page 36. There's a footnote  
23 there. That -- what's the significance of that?

24 A That indicates that there are additional pool

1 manufacturing and other order --

2 Q Let me stop you there.

3 A Sorry.

4 Q Additional non-pool --

5 A Not --

6 Q -- manufacturing plants?

7 A That -- that's correct. Additional non-pool  
8 manufacturing and other order pool plants are located in  
9 the states of Georgia, Idaho, Indiana, Iowa, Michigan,  
10 Minnesota, Nebraska, North Carolina, Ohio, Tennessee,  
11 Utah, and Wisconsin at this point in time, December 2001,  
12 that were not on this map.

13 Q This is -- this is a month, the month of  
14 December 2001?

15 A That's correct.

16 Q Okay. Let me direct your attention to page 42.

17 A Page 42, entitled, "The Northeast Order  
18 Selected Reporting and Payment Dates for the Year 2000."  
19 Again, this information is available on our Web site and  
20 it is mailed to handlers. It specifies selected reporting  
21 and payment dates as -- as specified in the -- in the  
22 order payment requirement procedures. On the left-hand  
23 side it indicates what the report is or what the payment  
24 is. And the top -- the top column, the pool month. And

1 the bolded letters there indicates the month -- the pool  
2 month in question. The boxes underneath refer to the  
3 month and date that something is required for the  
4 corresponding report.

5 Q So reading across, you can determine -- on page  
6 42, you can determine when the handler reports are due for  
7 each month as represented there?

8 A That is correct.

9 Q And reading down, you can -- you can determine,  
10 in let's say the month of January 2000, what date each of  
11 the various reports represented on the left-hand side are  
12 due?

13 A That is correct.

14 Q And the -- this information is contained on  
15 page 43 for 2001, is it not?

16 A That is correct.

17 Q And on page 44 for 2002?

18 A That is correct.

19 Q Now, you have -- just let me -- on -- on page  
20 44, you have some references there on the left to -- I  
21 believe those are order provisions, are they not?

22 A Those are order provisions that -- that specify  
23 in this case the -- the release of the producer price  
24 differential statistically uniform price.

1           Q     The appropriate references would be -- could be  
2 referred to the information on page 42 and 43 also?

3           A     That is correct.

4           Q     What's the significance -- you have "holidays"  
5 down there. What's the significance of -- of that at the  
6 bottom of each of these pages? What's -- why -- why do  
7 you have that on the document? Does that affect when --  
8 when the payments are due?

9           A     That is -- that does not affect -- you know,  
10 I'm uncertain of why -- why those are there, to be honest  
11 with you. Let me look at a month and see if I can  
12 determine what's going on.

13                     (Pause)

14                     BY MR. STEVENS:

15           A     I think they're for informational purposes  
16 only. I'd -- I'd have to verify that and --

17           Q     All right.

18           A     -- can I get back to you?

19           Q     Certainly. I -- and -- or we can take a break  
20 and we can get an answer or we could -- or we could do it  
21 at a later time. I'm just wondering whether there's any -  
22 - any particular significance to those dates as to why  
23 they're on there. What I hear from you in testimony is  
24 that -- that they're there for informational purposes

1 unless you -- unless you have additional testimony on that  
2 in the future?

3 A That's correct.

4 Q Let's turn to page 45. What's contained on  
5 page 45?

6 A Forty-five begins --

7 Q Let me stop you here before we -- before we  
8 begin that. The information up to page 42 is information  
9 that your office prepared for use of the parties in this -  
10 - in this hearing?

11 A That is correct.

12 Q Does it come from statistics of the market  
13 administrator and the U.S. Department of Agriculture?

14 A Yes, it does.

15 Q Was it prepared by you or pursuant to your  
16 supervision for this hearing?

17 A Yes, it was.

18 Q Is it presented in favor or opposed to any --  
19 any specific proposal?

20 A No.

21 Q Now, with respect to the -- to the documents  
22 that we're going to now go through, pages 45 through 65,  
23 how did those come to be prepared?

24 A There --

1 Q Forty-five through 65.

2 A They were prepared at -- at the request --

3 Q Let me -- let me amend that. I'm sorry.

4 Forty-five through 77 if you look at the second page of  
5 the -- of the table of contents. The question is, who --  
6 who -- who requested those documents?

7 A I just want to make sure --

8 (Pause)

9 BY MR. STEVENS:

10 A Tables on the pages 45 through 77 were prepared  
11 at the request of Friendship Dairies, Incorporated.

12 Q They asked you to prepare that information for  
13 use at this hearing?

14 A Yes, they did.

15 Q Does that come from -- does this information  
16 come from records at the Department of Agriculture or the  
17 market administrator's office?

18 A Yes, they do.

19 Q Prepared by you or pursuant to your  
20 supervision?

21 A Yes, they were.

22 Q Are they -- are they prepared for or against  
23 any proposal by you?

24 A No.

1           Q     All right.  Let's start with page 45.  Describe  
2     what that information is?

3           A     Page 45, entitled, "Supply Plants Operating  
4     Under the Northeast Order."  There's three sets of data  
5     here.  The first -- the first set from May of 2001 lists  
6     the operating handler.  That is the supply plant operating  
7     handler under the order at that time, May 2001.  The plant  
8     location and the differential in place.

9                     Taking the first one as an example, AgraMark,  
10    Cabot, Vermont, was a supply plant operating in May 2001.  
11    The differential for that plant was \$2.60.

12                    And the middle set of information is -- is the  
13    same but for the month of November 2001.  Again, supply  
14    plants operating under the order, their name, location,  
15    and differential for two -- November 2001.

16                    The bottom list of plants is the supply plants  
17    operating under the Northeast Order for May of 2002 that  
18    are operating, the handler name, location, and the  
19    differential.

20           Q     All right.  Page 46?

21           A     Page 46, entitled, "Total Volume of Bulk Milk  
22    Received in Northeast Order Pool Supply Plants for  
23    Selected Months."  There are three months' data reported  
24    here:  May 2001, November 2001, and May 2002.  The total

1 pounds based on the criteria in the title.

2 Q Okay. What's the significance of the footnote?

3 A The footnote indicates what was included in  
4 bulk milk, includes transfers and diversions of bulk raw  
5 milk, bulk whole milk, bulk nonfat milk, bulk lowfat milk,  
6 and producer milk. And those are all class -- categories  
7 that are spelled out in the order language.

8 Q All right. Page 46?

9 A That -- that was 46.

10 Q Excuse me? Oh, I'm sorry. Forty-seven. I  
11 -- I misspoke.

12 A Forty-seven, entitled, "Total Volume of Section  
13 1001.12, in paren, (B), Bulk Milk Received in Northeast  
14 Order Pool Supply Plants for Selected Months." On the  
15 left-hand side is the type of handler indicated based on  
16 information in Section 1001.12(b). Those are categories.  
17 Dairy farmer for other markets, other order, partially  
18 regulated, and unregulated plants. There's three months  
19 with data: May 2001, November 2001, and May 2002.

20 Due to restricted data issues, things were  
21 combined in many cases with the dairy farmer for other  
22 markets classification.

23 Q Yeah. As the footnote says, for producer  
24 handler plants, right?

1           A     Producer handler plants, in all instances it  
2 was included in the dairy farmer for other markets  
3 category.

4           Q     And -- and there are other restrictions aren't  
5 there?

6           A     That's correct.

7           Q     There's other restricted data. What's that?

8           A     Where there are double asterisks present, those  
9 volumes also were included in the dairy farmer for other  
10 markets category, again due to confidentially -- reasons.

11          Q     And these -- these type of handler -- they are  
12 -- they are defined in the order, each of these -- each of  
13 these handlers?

14          A     That's correct.

15          Q     All right. And -- and Section 1001.12(b)  
16 describes the bulk milk, what is included in the bulk  
17 milk?

18          A     1000.12(b) describes those plant designations.

19          Q     Okay. And -- and the bulk milk footnote?

20          A     Sorry. The bulk milk includes bulk raw milk,  
21 bulk whole milk, bulk nonfat milk, and bulk lowfat milk.

22          Q     As provided in the -- as provided in the order?

23          A     Correct.

24          Q     Page 48?

1           A     Entitled the "Total Volume of Section  
2     1000.9(c), Cooperative as Handler Bulk Producer Milk  
3     Received at Pool Supply Plants for Selected Months." And  
4     there are three months in question: May 2001, November  
5     2001, and May 2002, with total pounds for each -- for each  
6     occurring month.

7           Q     Okay. And Section 1000.9(c) describes what a  
8     cooperative is, a handler is?

9           A     That's correct.

10          Q     In that -- in that section. All right. Page  
11     49?

12          A     Page 49, entitled, "Non-Pool Plants, paren,  
13     (Other Order or Unregulated) with Bulk Milk Transfers to  
14     Plants Regulated under the Northeast Order May 2001."  
15     Then there's a line that mentions total non-pool bulk milk  
16     transfers to Northeast Order pool plants, which is the  
17     volume in this case May 2001, 24,196,563. And found below  
18     that is a listing of those non-pool plants transferring  
19     milk.

20          Q     And their location?

21          A     And their location, yes.

22          Q     And -- and is -- does -- how is bulk milk  
23     defined in this table? What -- what does -- what does it  
24     include?

1           A     Bulk milk in this table is defined on -- on the  
2     corrections page, number nine, in the supplies -- you  
3     noted my corrections there for --

4           Q     All right. So as described on the corrections  
5     page --

6           A     Number nine. Bulk milk includes bulk whole  
7     milk, bulk nonfat milk, bulk raw milk, bulk cream, bulk  
8     skim condensed, and bulk concentrated milk.

9           Q     And what is bulk milk?

10          A     Bulk milk is --

11          Q     Is it --

12          A     -- packaged milk.

13          Q     Excuse me?

14          A     Simply not packaged milk.

15          Q     All right. Turn to page 50.

16          A     Fifty is the same -- same -- same request as --  
17     as -- as page 49 but for a different month. At this point  
18     in time, it's November of 2001.

19          Q     As -- as 51?

20          A     As is 51.

21          Q     For what month?

22          A     For May of 2002.

23          Q     Okay. Page 52?

24          A     Titled, "Total Volume of Bulk Milk Transfers by

1 Non-Pool Plants, paren, (Other Order or Unregulated) to  
2 Northeast Order Pool Distributing Plants for Selected  
3 Months," the months being May 2001, November 2001, and May  
4 2002, with associated pounds for those three periods.

5 Q And -- and bulk milk as it's used here is  
6 described on your correction sheet?

7 A Yes. Correction Number 10. Bulk milk includes  
8 bulk whole milk, bulk nonfat milk, bulk raw milk, bulk  
9 cream, and bulk skim condensed.

10 Q How about page 53?

11 A Titled, "Total Volume of Bulk Milk Transfers by  
12 Non-Pool Plants, paren, (Other Orders or Unregulated) to  
13 Northeast Order Pool Supply Plants," three month years in  
14 question here: May 2001, November 2001, and May 2002,  
15 with associated pounds for those respective periods.

16 Q All right. And how is bulk milk defined here?  
17 Is it on the correction sheet?

18 A Yes, it is. Correction Number 11. Bulk milk  
19 includes bulk whole milk, bulk nonfat milk, bulk raw milk,  
20 bulk cream, and bulk skim condensed.

21 Q Describe what's on page 54?

22 A Entitled, "Partially Regulated Plants with  
23 Route Dispositions in the Northeast Order for the Month  
24 May 2001," and total route dispositions is given. And the

1 list of those partially regulated plants underneath.

2 Q And the same information for November 2001 is  
3 on page 55?

4 A That is correct.

5 Q The same information for May 2002 is on page  
6 56?

7 A That is correct.

8 Q Describe what's on page 57?

9 A Entitled, "Partially Regulated Plants under the  
10 Northeast Order with Packaged Fluid Milk Transfers to Pool  
11 Distributing Plants for the Month of May in Year 2001."  
12 Total transfers in pounds -- the partially regulated  
13 plants with packaged milk transfers listed underneath.  
14 And the receiving pool distributing plants under that.

15 Q So the first list is the plants that  
16 transferred the milk?

17 A That's correct.

18 Q And the second is the receiving pool  
19 distributing plants?

20 A That is correct.

21 Q Total transfers in pounds for May 2001?

22 A That is correct.

23 Q Is the same type of information contained on  
24 page 58 for November of 2001?

1 A Yes, it is.

2 Q And on page 59 for May of 2002?

3 A Yes, it is.

4 Q Turn your attention to page 60. What's  
5 contained on that page?

6 A Entitled, "Total Additional Pounds of Partially  
7 Regulated Distributing Plant Milk Pooled under the Terms  
8 of Proposal Number 8 for the Period of January 2002  
9 through July 2002."

10 Q Okay. What's the significance of the -- of the  
11 footnote?

12 A There is restricted data in the month of March.  
13 Again, less than three handlers would have -- would have  
14 qualified under this -- terms of this proposal, which  
15 Proposal 8 is one of the proposals of this hearing.

16 Q Does that mean that there would be a number  
17 there?

18 A There would be a number if the month of March  
19 is --

20 Q It would not be zero?

21 A It would not be zero, that is correct.

22 Q And that's under Proposal 8, right?

23 A That is correct.

24 Q And on page 61, is it the same information

1 under Proposal 9? Or not?

2 A Page 61, entitled "Total Additional Pounds of  
3 Partially Regulated Distributing Plant Milk Pooled under  
4 the Terms of Proposal Number 9." Yes, looking at Proposal  
5 9.

6 Q I didn't mean to confuse you by my question,  
7 certainly, but -- but the title of that document describes  
8 what that information is?

9 A That is correct. The period January 2000 and  
10 July 2002. January 2002 to July 2002.

11 Q All right. January 2002 to July 2002?

12 A That's correct.

13 Q Thank you. Page 62?

14 A Entitled, "Volume of Producer Milk Ineligible  
15 for Pooling on the Northeast Order under Proposal Number  
16 6, Diversion Limitation, January 2001 through July 2002."  
17 It lists the months -- years and months in question,  
18 ineligible pounds, zeroes, and some asterisks.

19 Q And the significance of the asterisks?

20 A Again, there would be a number in that case but  
21 it is restricted data due to confidentiality concerns.

22 Q Less than -- less than three handlers?

23 A That's correct.

24 Q All right. How about the information on page

1 63?

2 A Entitled, "Volume of Producer Milk Ineligible  
3 for Pooling on the Northeast Order under Proposal Number  
4 3, Dispersion Limitation, for the period January 2001  
5 through July 2002." The year and month in question, the  
6 volume of milk. Some -- some months there is volumes,  
7 other months there are asterisks. Some months are zero.

8 Q September zero -- September 2001 is zero.  
9 October of 2001 has an asterisk. There are other -- there  
10 are other numbers for different months?

11 A Correct.

12 Q The asterisks means restricted data?

13 A That is --

14 Q Less than three handlers. It's restricted  
15 data?

16 A That is correct. It's restricted data. Less  
17 than three handlers.

18 Q Strike that other comment there.

19 (Pause)

20 BY MR. STEVENS:

21 Q How about page 64?

22 A Entitled, "Total Volume of Milk Received at  
23 Northeast Order Pool Distributing Plants for Selected  
24 Months." The month and year in question: May 2001,

1 November 2001, May 2002. The total pounds for that  
2 period.

3 Q All right. What's the significance of the  
4 footnote?

5 A The footnote indicates what is included in  
6 those pounds. It includes bulk producer milk, bulk whole  
7 milk, bulk lowfat milk, bulk reduced fat milk, and bulk  
8 nonfat milk.

9 Q All right. What's contained on page 65?

10 A "Total Volume of Producer Milk Received by  
11 Northeast Order Pool Distributing Plants for Selected  
12 Months." The month and year in question, the total  
13 pounds. Month of May 2001, November 2001, May 2002, and  
14 associated pounds for those -- for those periods.

15 Q All right. How about what's contained on page  
16 66?

17 A "Entitled Total Volume of Section 1000.9(c),  
18 Cooperativist Handler Producer Milk Received in Northeast  
19 Order Pool Distributing Plants, Selected Months." The  
20 month and year in question: May 2001, November 2001, and  
21 May 2002, and the corresponding pounds for that period.

22 Q A cooperative and a handler is defined under  
23 Section 1009.c?

24 A Correct.

1 Q Tell us what's contained on page 67?

2 A Entitled, "Bulk Transfers by Pool Supply  
3 Plants, the Northeast Order Pool Distributing Plants,  
4 Selected Months." Again, the month-year in question: May  
5 2001, November 2001, and May 2002, and the total pounds  
6 for those associated months.

7 Q What's the significance of the footnote?

8 A The footnote indicates what was included in  
9 this case. Includes bulk raw milk, bulk whole milk, bulk  
10 nonfat milk, bulk lowfat milk, bulk skim condensed, bulk  
11 milk concentrate, and bulk cream.

12 Q Tell us what's on page 68?

13 A Entitled, "Volume of Milk Diverted from  
14 Northeast Order Distributing Plants to Non-Pool, in paren,  
15 (Unregulated Plants), for the Month of May 2001." First  
16 entry, total diverted to non-pool plants in pounds, and  
17 then following that is the -- is a list of receiving non-  
18 pool plants that received that.

19 Q Okay. Is the same information on page 69 for  
20 November 2001?

21 A That is correct.

22 Q And how about the information on page 70? Is  
23 that the same for May 2002?

24 A That is correct.

1 Q Tell us what's contained on page 77? 71, I'm  
2 sorry. Can't even read.

3 A Entitled, "Total Volume of Bulk Milk Diverted  
4 from Distributing Plants to Pool Plants under the  
5 Northeast Order, May 2001." The first entry, total  
6 diverted to pool plants in pounds. Following that is the  
7 pool plants, the names, and their locations.

8 Q What's the significance of the footnote?

9 A Footnote indicates that the diverting would be  
10 both pool distributing and pool supply plants. The  
11 receiving ones, excuse me.

12 Q Okay.

13 A The ones that are receiving that. The pool  
14 plants would be --

15 Q Go ahead.

16 A -- would be distributing plants and pool supply  
17 plants.

18 Q The -- the -- the number describes the amount  
19 diverted to pool plants?

20 A That's correct.

21 Q The pool plant description describes the  
22 receiving plants?

23 A Pool plant description -- describes the  
24 receiving, correct.

1 Q And they could be either pool distributing  
2 plants or pool supply plants?

3 A That's --

4 Q I believe I should say either/or. It includes  
5 pool supply plants and pool supply -- I'm sorry.

6 A That's --

7 Q It includes pool distributing plants and pool  
8 supply plants?

9 A That is correct.

10 Q And is that similar to the information  
11 contained on page 72?

12 A That's correct.

13 Q That's for November of 2001?

14 A Correct.

15 Q And is that similar to the information on -- on  
16 page 73 for May of 2002?

17 A That is correct.

18 Q Okay. Describe for us what's on page 74?

19 A Page 74, entitled, "Total Volume of Producer  
20 Milk Diverted to Non-Pool Plants under the Northeast Order  
21 for May of 2001." Top entry, the total diverted to non-  
22 pool plants in pounds. Listed underneath is receiving  
23 non-pool plants.

24 Q Okay. And similar information is -- well, let

1 me -- let -- what's the significance of the footnotes?

2 A There's two footnotes, one indicating a split  
3 plant designation for -- for two plants on that list. And  
4 there's a note on the bottom that indicates non-pool  
5 plants include exempt plants, partially regulated, --  
6 unregulated, and other order plants.

7 Q Now, is similar information contained on page  
8 75 for November of 2001?

9 A That is correct.

10 Q And for May of 2002 on page 76?

11 A That is correct.

12 Q Describe for us what's on page 77?

13 A Entitled, "Volume of Cooperative 9(c) Handler  
14 Producer Milk Deliveries to Northeast Order Pool Plants,  
15 Selected Months." Pool period in question, month and  
16 year, May 2001, November 2001, and May 2002, and -- and  
17 the -- the products represented in that -- for that --

18 Q Some -- the sum of the products?

19 A The sum of the products for that -- for that  
20 request, yes.

21 Q Is that in pounds?

22 A That is in pounds.

23 Q And what's the significance of the footnote?

24 A The footnote in -- indicates that includes

1 deliveries to pool distributing plants and pool supply  
2 plants.

3 Q Okay. Now, let me refer you to the  
4 information, pages 78 through 84. You received a request  
5 to prepare that information?

6 A Yes. We received a request from New York State  
7 Dairy Foods to prepare the information in those tables.

8 Q As -- as with the information you prepared for  
9 Friendship, from your records or the Department of  
10 Agriculture or the marketing administrator's records?

11 A That is correct.

12 Q By you or pursuant to your supervision?

13 A That is correct.

14 Q Not for or against any proposal presented here?

15 A That's correct.

16 Q All right. Why don't you take us through,  
17 starting with page 78, Appendix 7? Tell us what that  
18 information is?

19 A Page 78, entitled, "Total Pounds of Milk and  
20 Number of Producers Pooled by Section 1000.9(c),  
21 Cooperative as Handler, for the Period July 2001 through  
22 July 2002." There's the year and the month in question on  
23 the left, starting with 2001.

24 Second -- the first column of numbers indicates

1 the total volume pooled, total pounds pooled.

2 The third column, number of producers --  
3 indicates the number of producers that that represents.

4 Q All right. Tell us what's in Appendix --  
5 Appendix 8 on page 79?

6 A Entitled -- page 79, entitled, "Plant Transfers  
7 of Bulk Fluid Milk from Northeast Order Pool Plants to  
8 Other Order Pool Plants and Bulk Transfers from Other  
9 Order Pool Plants to Northeast Order Pool Plants for the  
10 period January 2001 through June 2002." The left is the  
11 pool period, the month -- the year and the month.

12 The first two sets of data indicate transfers  
13 to other order plants. And the sub-heading underneath  
14 that is the receiving order -- orders and then the pounds  
15 of milk that would go along there.

16 Q Okay. For -- so January of 2001, six and 30  
17 refer to order number six and order 30?

18 A That's correct. The receiving orders.

19 Q And the numbers in the document refer to the --  
20 to the various orders in that way?

21 A That is correct. The next column is -- there's  
22 an asterisk on the six and 30 because that, again, is  
23 restricted data. Less than three handlers or plants  
24 reporting for the order.

1           The middle two columns, "Transfers from Other  
2           Order Plants," that is milk coming back into the Northeast  
3           Order, indicates the numbers that this transferred milk  
4           was coming from and the pounds of milk that that accounted  
5           for.

6           The final column, "Net Movements, Transfers  
7           Less Receipts." In this case, for January 2001, there's  
8           an "N/A" because we had restricted data on the transfers  
9           out.

10          Q     When that number is a positive number, what  
11          does that mean?

12          A     That the amount of milk that was going out  
13          exceeded the amount of milk that came back in. The  
14          transferred milk going out exceeded the transferred milk  
15          coming into the Northeast Order.

16          Q     And when it's a negative?

17          A     The opposite will be true. The amount of  
18          transferred milk coming into this order exceeded the  
19          volume of transferred milk that was go -- going out in  
20          that particular month.

21          Q     Okay. I direct your attention to page 80,  
22          Appendix 9.

23          A     Appendix 9 had a change in the title noted in  
24          the corrections page, and I will read that corrected

1 title. The title now is, "Diversions from Northeast Order  
2 Handlers to Other Order Pool Plants and Diversions from  
3 Other Orders to Northeast Order Pool Plants."

4 Q Okay. It's still the same time period?

5 A Same -- I'm sorry. That's correct. Still the  
6 same time period.

7 Q All right.

8 A The pool period and year and month are  
9 referenced on the left-hand column. The first set of  
10 numbers is diversions to other order plants. Those are  
11 the receiving orders. Indicated as before, the order  
12 number 530 to -33, et cetera.

13 The next column, there's an asterisk because it  
14 is restricted data.

15 The middle two columns is diversions from other  
16 orders. And underneath that is the shipping orders. That  
17 is milk coming back -- diverted milk coming back to the  
18 Northeast Order, the associated pounds. In this instance  
19 in January of 2001, we have "N/A"s as the net movements,  
20 diversions out less receipts due to the restriction data  
21 in January 2001.

22 Q All right. And -- and using the information,  
23 if I'm describing this correctly, in Column 3 and Column  
24 5, an arithmetical computation there will bring you to the

1 -- to the amount listed in the last column?

2 A Is it two and four you're referring to? Column

3 --

4 Q I referred to it as three because I was  
5 counting the pool --

6 A I'm sorry. Okay. You're right.

7 Q -- but you know what I'm saying. It's the  
8 pound --

9 A Yes.

10 Q -- the pound column under diversions to other  
11 pool plants and the pound column under diversions from  
12 other orders. That is arithmetical -- the computation is  
13 -- is -- results in -- in the number in the last column?

14 A That is correct.

15 Q And the same is true for the previous exhibit,  
16 Appendix 8, is it not?

17 A That is correct.

18 Q All right. And -- and you described the  
19 material in the footnotes, the restricted data and the  
20 "N/A," non-applicable, where restricted data is included,  
21 I -- I'm assuming?

22 A That is correct.

23 Q All right -- too far here.

24 (Pause)

1 BY MR. STEVENS:

2 Q Okay. Are we at page 81? Tell us what's  
3 contained on page 81?

4 A Page 81, entitled, "Estimated Monthly Payments  
5 to Qualifying Cooperatives for Proposed Marketwide Service  
6 Payment for the Period January 2001 to June 2002." Left-  
7 hand column is the year and month in question. The next  
8 column, "Estimated Qualifying Pounds," is the -- is -- is  
9 -- is our estimate of the qualifying pounds based on the -  
10 - on the criteria in the proposal that would qualify for  
11 the -- for the payment.

12 The next column is the "Estimated Total Funds  
13 Deducted from the Producer Settlement Fund" at a rate of  
14 six cents per hundredweight, which is simply taking the  
15 pounds in Column 1, multiplying at a rate of six cents a  
16 hundredweight.

17 The third column, entitled, "Estimated Impact  
18 on Producer Price Differential on a Cents Per  
19 Hundredweight Basis," brought out to four decimal places.

20 Q What's the significance of the material at the  
21 bottom of the -- of the table? Starting with the handlers  
22 qualify?

23 A The information on the bottom indicates that  
24 when we did this analysis we looked at the qualifying

1 requirements of the proposal and these were the handlers  
2 that would have qualified under the proposed regulations.  
3 And I'll note that there is a corrected spelling in the --  
4 in the word "Cooperative" in St. Albans Cooperative  
5 Creamery. It happens to be a footnote -- I'm sorry,  
6 corrected page number -- number 13 on the corrections  
7 document.

8 Q All right. Could you tell us what's contained  
9 on Appendix 11 on page 82?

10 A Entitled -- page 82, entitled, "Class 1 Sales  
11 by Northeast Order Pool Distributing Plants Inside and  
12 Outside the Northeast Marketing Area for the period  
13 January 2001 to July 2002." The first column is the year  
14 and month in question.

15 The next column, entitled, "Total Class 1 Sales  
16 in the Marketing Area." In January 2001, for example, it  
17 was 862,143,207.

18 The next column, "Class 1 Sales by Northeast  
19 Order Handlers and Other Federal Order Markets." For  
20 example, January 2001, the volume was 2 -- 11,026,025  
21 pounds.

22 The next column, entitled, "Class 1 Sales by  
23 Northeast Order Handlers in Non-Federal Order Markets."  
24 Entitled -- I'm sorry. January 2001 is an example of

1 80,793,557.

2 And the final column to the right entitled,  
3 "Total Class 1 Utilization," is a summary of those three -  
4 -

5 Q So it's the sum of the --

6 A -- prior columns.

7 Q -- of the other three columns?

8 A That's correct.

9 Q What's the footnote? What's the significance  
10 of the footnote?

11 A The footnote indicates that this data does not  
12 include route sales by partially regulated distributing  
13 plants, exempt plants, and producer handlers. We are not  
14 -- we do not publish this data.

15 Q Take us through the information on Appendix 12,  
16 page 83, please?

17 A Page 83, entitled, "Sales of Packaged Fluid  
18 Milk Products in the Northeast Marketing Area from Plants  
19 Regulated by Other Federal Orders for the Period January  
20 2001 through July 2002." This data is reported to us by  
21 other federal orders.

22 The column on the left reports the year and  
23 month in question. And then there are four -- I'm sorry,  
24 three -- four headings along the -- along the top there.

1 One is the Appalachian Order, Order Number 5; the Upper  
2 Midwest, Order 30; the Mideast Order, Order 33; a category  
3 called "All Other Orders"; and a total on the right.

4 The -- the three individual orders,  
5 Appalachian, Upper Midwest, and Mideast, were included  
6 because at some point in this year and a half period of  
7 time, January 2001 through July 2002, they had figures  
8 that were -- that were not restricted data. In all other  
9 cases, there's a double asterisk where their -- their data  
10 was restricted less than three handlers, three plants.  
11 And those figures were included in the "All Other Orders"  
12 total.

13 Q Okay. So -- so when I look for 2001 at the  
14 bottom of the "All Others -- All Other Orders" column and  
15 there's 7.7 million, I believe, pounds represented there,  
16 that includes the restricted data also in -- in aggregate  
17 with everything else?

18 A That is correct.

19 Q And that would be true for 2002 also?

20 A That is correct.

21 Q And the footnotes describe the orders in  
22 addition to the ones shown on the table?

23 A That is correct.

24 Q Could you tell us what's contained on Appendix

1 13, page 84?

2 A Page 84, entitled, "Sales of Packaged Fluid  
3 Milk Products in the North" -- I'm sorry, "in the Mideast  
4 Marketing Area from Plants Regulated in the Northeast  
5 Order, Period January 2001 through July of 2002." Left  
6 column, the year and month in question. Year, January  
7 through July of 2002 -- January 2001 through July of 2002.  
8 And the total pounds that are associated with the  
9 respective months.

10 Q All right. Now, you -- you -- referring now to  
11 -- to the rest of the pages here, you got requests from  
12 Association of Dairy Cooperatives in the Northeast. You  
13 have a request from them. You have a request, I -- I  
14 believe, that was from both New York State Dairy Foods and  
15 Association of Dairy Cooperatives in the Northeast. So  
16 now I'm referring to Exhibits 14 through -- I'm sorry.  
17 Appendix 14 through 17, pages 85 through 88.

18 A That is correct.

19 Q And -- and those were prepared by you or  
20 pursuant to your supervision?

21 A Yes.

22 Q From records of the market Administrator at  
23 Department of Agriculture?

24 A Yes.

1 Q And they're not presented for or against any of  
2 the proposals, are they?

3 A No.

4 Q All right. Let's just go through those real  
5 quickly. The -- the Exhibit 14 on page 85?

6 A Entitled, "Milk Powder and Butter Production at  
7 Selected Plants Associated with the Northeast Order for  
8 the Months of May and November, Period of 1992 through  
9 2002."

10 The left-hand column indicates the month and  
11 year.

12 The next column, total milk receipts at the  
13 plant. I'll take May '92 as an example. About  
14 332,910,899 pounds.

15 The next column, total cream receipts,  
16 4,748,060.

17 The next column --

18 Q Is a total of the first two?

19 A Is -- correct. Is a combination of -- total of  
20 the first two of May -- May of '92 of -- example of  
21 328,658,959 pounds.

22 The next column, entitled, "Total Skim Milk  
23 Powder Manufactured." Example, May '92, of 128,425,719.

24 The next column, "Total -- Total Whole Milk

1 Powder and Other Powder" of, for example, May '92, of  
2 64,518,136.

3 And the following column -- final column to the  
4 right, "Total Butter Manufactured," for May '92 example is  
5 8,141,988.

6 And just to make a note, on the corrections  
7 --

8 Q Right.

9 A -- document, the -- the pound symbol in the  
10 "Total Whole Milk Powder and Other Powder" category does  
11 not apply to anything. It was a typographic error.

12 Q Doesn't have any significance in the document.  
13 There is no footnote corresponding to that?

14 A That is correct.

15 Q And there are some footnotes there, right,  
16 which --

17 A Yes.

18 Q -- which qualify the information contained in  
19 the exhibit?

20 A That is correct.

21 Q All right. Turning your attention to page 86,  
22 Appendix 15. Describe that for us?

23 A Page 86, entitled, "Producer Deliveries to the  
24 Pool Distributing Plants for the Period January 2001

1 through June 2002." The first column is the year-month in  
2 question.

3 The next column, entitled, "Percentage of  
4 Cooperative 9(c) Producer Milk Receipts Delivered to  
5 Distributing Plants." And the percentage that is  
6 indicated there.

7 The next column to the right is, "Percentage of  
8 Proprietary Handler Producer Milk Receipts Delivered to  
9 Distributing Plants."

10 Q Okay. And they -- they list by month, by year,  
11 all of 2001 and part of 2002?

12 A That is correct.

13 Q There is an average for 2001 and there's a six-  
14 month average for 2002?

15 A That is correct.

16 Q The -- the information in the columns is  
17 qualified by the footnotes?

18 A That is correct.

19 Q Let me direct your attention to page 87.

20 JUDGE BAKER: Mr. Stevens?

21 MR. STEVENS: Yes?

22 JUDGE BAKER: Will this witness be through in  
23 the next few minutes? Because this is come -- there comes  
24 a time when we need our recess.

1 MR. STEVENS: I'm -- I'm certainly willing to -  
2 - a recess. We can continue this.

3 JUDGE BAKER: How long? How much longer do you  
4 think he'll take?

5 MR. STEVENS: Well, I only have two more  
6 exhibits, and then --

7 JUDGE BAKER: All right.

8 MR. STEVENS: -- I might ask that we just  
9 finish these two and then he'll be subject to cross  
10 examination after our break, if that's --

11 JUDGE BAKER: All right.

12 MR. STEVENS: -- if that would be --

13 JUDGE BAKER: That's fine.

14 MR. STEVENS: -- agreeable?

15 JUDGE BAKER: Fine. Thank you.

16 MR. STEVENS: Certainly.

17 BY MR. STEVENS:

18 Q Now, remind me where I was. Page 87?

19 A Page 87.

20 Q Is that right?

21 A Page 87, entitled, "Producer Account and  
22 Percent of Total Producer Milk Receipts Accounted for by  
23 'Other States' Category for the Period January 2000  
24 through June 2002." In the left-hand column we have the

1 year in question followed by the month in question. Total  
2 pool producers.

3 And the next column in the grayed shaded area  
4 indicates producers in the "Other States" category. In  
5 January of 2000, there were -- there were -- there were  
6 not any that we had restricted data for in the other  
7 states. No pounds, no percent.

8 If you jump down to January of 2001, for  
9 example, there were 481 -- states -- I'm sorry. There  
10 were 481 producers that fell into the "Other States"  
11 category due to restricted data nature. They represented  
12 663,955,070 pounds, or 3.1 percent of the total pooled  
13 receipts. The Footnote Number 5 there indicates for what  
14 states the restricted data was included.

15 Q And the footnotes on the -- on the extreme  
16 right of the shaded area there describe or qualify the  
17 information contained in the exhibit?

18 A That is correct.

19 Q All right. I believe we're at page 88, Exhibit  
20 -- Appendix 17. Could you describe that information,  
21 please?

22 A Page 88, entitled, "Cooperative and Non-  
23 Cooperative Member Share of Producer Receipts and  
24 Producers." On the left-hand side we have the year and

1 month in question.

2 And under the heading, "Producer Receipts,"  
3 this is the market total. That is the total pool volume  
4 at that month.

5 "Volume of Milk," the next column, in the  
6 cooperative that the cooperative members -- producers who  
7 are members of cooperatives represented in the second  
8 column.

9 The third column, "Non-Cooperatives." That is  
10 producers who are not members of a cooperative as  
11 represented by those figures.

12 And the -- the first shaded area, "Percent of  
13 Receipts Cooperative." For the month of January 2002, for  
14 example, cooperative members represented 73.8 percent of  
15 the total pool receipts. Non-cooperative producers  
16 represented 26.2 percent of the total pool receipts.

17 Q Correct me if I'm wrong. That's -- that's an  
18 arithmetical computation from the first three columns?

19 A That is correct.

20 Q As is -- as is from the next three columns and  
21 those computations?

22 A That is correct.

23 Q Could you describe the significance of the  
24 footnote?

1           A     The footnote notes that this is information  
2 reported at time of the pool.  It's -- it's handler-based  
3 numbers at pool time.

4           MR. STEVENS:  Anything else?  That's all I have  
5 on direct, Your Honor.

6           JUDGE BAKER:  Very well.  Thank you.  That  
7 concludes the direct testimony of Mr. Fredericks.

8           Prior to our morning recess, may I see by a  
9 show of hands how many have questions of Mr. Fredericks?

10           (There was a show of hands.)

11           JUDGE BAKER:  There are quite a number, yes.  
12 Very well.  We'll take our morning recess, a 15-minute  
13 recess, at this time.  Thank you.

14           (Brief recess)

15           JUDGE BAKER:  Could we please come to order  
16 after our morning recess?

17           During that time a question was raised as to  
18 when we anticipate our luncheon hour.  And that's  
19 anticipated around 12:30, as -- as nearly as -- as we can  
20 make it.

21           Mr. Fredericks is on the stand and has  
22 completed his direct testimony with respect to what has  
23 been marked for identification as Exhibit 5 and 5-A.  We  
24 can now ask for cross examination.  Who would like to --

1 yes, Mr. Rosenbaum? Yes.

2 CROSS EXAMINATION

3 BY MR. ROSENBAUM:

4 Q Mr. Fredericks, I wonder if I could have you  
5 turn to the first page of Exhibit 5? By that, I mean the  
6 page that says, "page one." Which is entitled, "Receipts  
7 of Producer Milk by State." Is that --

8 A Yes.

9 Q Now, am I right that this is a compilation of  
10 the quantity of milk pooled on the Northeast Order?

11 A That is correct.

12 Q And it -- this is a statement -- (inaudible)?

13 A That's correct.

14 Q Now, I want to focus initially on your very  
15 last piece of information -- milk pooled from other  
16 states. Do you see that? For the three years indicated.  
17 No, still on the same page.

18 A Yes, yes.

19 Q And your footnote states -- the second of the  
20 two footnotes states that restricted data is included in  
21 "Other States," correct?

22 A Correct.

23 Q Now, am I correct that for the year 2001 the  
24 only state that is -- included in "Other States" on the

1 grounds of it being restricted data is Rhode Island?

2 A Well, Rhode Island would be in every month.

3 I'd have to check and see if there was any other ones in -  
4 - in the year 2001 --

5 Q Well, I see West Virginia for the month of  
6 June. And let me just ask a wrap-up question. Am I  
7 correct that the only -- let me back up a bit.

8 The -- the document lists a number of states by  
9 name, correct?

10 A Correct.

11 Q And then it has a category, "Other States,"  
12 correct?

13 A Correct.

14 Q And for the year 2001, am I right in stating  
15 that the only time that one of the named states is --  
16 (inaudible) -- "Other States" is -- is with respect to the  
17 state of Rhode Island for every single month and with  
18 respect to the state of West Virginia for the month of  
19 June?

20 A That would be correct.

21 Q Okay. So that -- (inaudible) -- and to get a  
22 ballpark sense of things, we know that Rhode Island --  
23 (inaudible) -- year 2000 -- (inaudible) -- pounds of milk  
24 a month, correct?

1           A     That's correct.

2           Q     So something along the order of that is  
3 included in "Other States" for the year 2001, correct?

4           A     That is correct.

5           Q     And some -- (inaudible) -- production in West  
6 Virginia -- (inaudible) -- a bit.  But -- it's --  
7 (inaudible) -- something in that nature, correct?

8           A     That is correct.

9           Q     Okay.  All right.  Now, if you could turn --  
10 (inaudible) -- now to Appendix 16?  You might want to keep  
11 your finger on the previous page because I -- I do have --  
12 my initial question relates to the two documents and how  
13 they correspond to each other.

14                     This Appendix 16 -- on page 87, lists total  
15 -- producers and then lists how much comes from other  
16 states, correct?

17           A     That is correct.

18           Q     And there is an indication there for the number  
19 of pounds that come from other states, correct?

20           A     That is correct.

21           Q     And am I correct that that in fact is the same  
22 -- (inaudible) -- that had appeared back on page one under  
23 the heading, "Other States"?

24           A     That is correct.

1           Q     Okay.  And so for Appendix 16, we have -- we  
2     know that other states for the year 2001 includes Rhode  
3     Island for every month and West Virginia for June of 2001.  
4     And we have a rough sense of the quantity involved based  
5     upon the questions I asked you previously, correct?

6           A     That is correct.

7           Q     Now, focusing on Appendix 16, am I correct in  
8     interpreting that as indicating that in the months of May,  
9     June, and July of 2001, over 100 million pounds of milk  
10    was shipped into and pooled on the Northeast Order from  
11    other states?

12          A     That is correct.  From the other states that  
13    are footnoted in -- in number six there.

14          Q     And -- and -- and by "other states" in this  
15    context, you mean states that are not geographically part  
16    of the Northeast Order, correct?

17          A     With the exception of Rhode Island, which is  
18    one of those that would be included in that number.

19          Q     All right.  And indeed, in the peak month of  
20    June, over five percent of all of the milk pooled in the  
21    Northeast Order came from states located geographically  
22    outside the order, is that correct?

23          A     That is correct, again, with the -- the  
24    adjustment for Rhode Island.

1           Q     And -- and one might have to make a couple  
2 million pound adjustment to -- to account for Rhode  
3 Island, correct?     Assuming Rhode Island production was  
4 the same in 2001 as it had been in 2000 when the data was  
5 not restricted?

6           A     That is correct.

7           Q     Now, I assume you agree with me that the spring  
8 is generally thought of as the time when milk production -  
9 - milk production is at its peak, correct?

10          A     That's -- that's true.

11          Q     And the fall is when milk production is at its  
12 -- at -- is lowest, correct?

13          A     That is correct.

14          Q     And if we look at the fall now, what we see is  
15 that in November only 13 million pounds of milk came in  
16 from other states, correct?

17          A     That is correct.

18          Q     And so that about 90 million pounds milk more  
19 comes into the Northeast Order in the spring, the time  
20 when supplies are greatest, as compared to the fall when  
21 supplies are the lowest, is that right?

22          A     In this particular year, in those particular  
23 months in question, that appears to be correct.

24          Q     And we know that, taking June for example --

1 actually, taking any of the months, May, June, or July,  
2 that milk comes in from as far away as Idaho, Michigan,  
3 Minnesota, Utah, and Wisconsin, correct?

4 A Milk from producers in those states was pooled  
5 on this order, not necessarily coming in.

6 Q Actually -- and -- and you corrected me and  
7 I'll get to that point in a minute. I appreciate that  
8 correction.

9 Now, have you looked at Proposal Number 7?

10 A Yes.

11 Q And assuming that this milk coming in from  
12 these other states is going to a Class 3 or 4 plant that -  
13 - that meets the qualifications of Proposal 7, then a  
14 marketwide service payment would be made with respect to  
15 this other state milk, correct?

16 A If -- if the -- these volumes of other states  
17 were included on pooled reports of handlers that we've  
18 indicated will qualify, yes, that would -- would be --  
19 payments would be made on that.

20 Q Now, you corrected me a minute ago when I  
21 mistakenly said the milk was shipped into the order. In  
22 fact, you've indicated, I believe, on -- on page 45 what -  
23 - what -- which supply plants are associated with the  
24 Northeast Order, correct?

1           A     For those months in question, yes.

2           Q     And you've included in that list for the year  
3     2001 -- well, let me -- let me -- for May 2001, which is  
4     one of the months we just got through looking at, there's  
5     a plant in Minnesota that's a supply plant in the  
6     Northeast Order, correct?

7           A     That's correct.

8           Q     And -- and the implication of that is that a  
9     farmer would ship milk -- let me rephrase that.

10           A     A farmer located in -- in Minnesota would ship  
11     milk to a plant located in Minnesota. The milk would be  
12     processed there into Class 3 or 4 product. And that plant  
13     would qualify for a six-cent marketwide service payment to  
14     be drawn out of the Northeast Order under Proposal Number  
15     7, is that right?

16           A     So long as that plant in question in Minnesota  
17     or wherever met the pooling requirements of the order.  
18     That is, the other order requirements.

19           Q     And the same would be true for the Land O'  
20     Lakes plant located in Wisconsin, correct?

21           A     That is correct.

22           Q     And the -- so we've got, what, two plants in  
23     Minnesota and one plant in Wisconsin that qualify as  
24     supply plants. And accordingly, milk shipped to them from

1 a farmer located across the street from that plant so to  
2 speak would qualify for the marketwide service payments  
3 under Proposal Number 7, is that correct?

4 A Again, if they -- if they met the other  
5 qualification standards for the order, Northeast Order,  
6 those plants.

7 Q Okay. Well, we -- we know they already qualify  
8 as supply plants or you wouldn't have put them on the  
9 list, correct?

10 A That's right. For these months as noted here,  
11 correct.

12 Q Do you -- still sticking with page 45, do you  
13 know which of these supply plants -- take May of 2001 -  
14 - are owned by cooperatives and which ones are not?

15 A Do I personally?

16 Q Yes.

17 A Yes.

18 Q Could -- could you go through them one by one  
19 and tell them co-op or non-co-op?

20 A That information could be obtained from other  
21 documents that we've -- we've submitted here.

22 Q Well, if could do it, I'd appreciate it if  
23 you'd just go ahead and do it.

24 A I -- I can't do that. This is -- we weren't --

1 this request was -- was for something else. I won't do  
2 that.

3 That can be obtained from other documents that  
4 we -- we've submitted.

5 Q Do you -- do you do it by -- by comparing page  
6 45 to the list that appears elsewhere of the co-ops? On  
7 page 19?

8 A You -- no. It could be determined from  
9 information on -- on page 16.

10 Q How does that information tell you whether or  
11 not the plant's a co-op or not?

12 A Correct. Let me think a second. That -- what  
13 I was -- what I was thinking is that that's a -- that  
14 indicates whether they're a pool supply plant or -- or  
15 whatever. That does not indicate their ownership status  
16 of a -- as a cooperative.

17 I -- I guess there isn't a direct list that  
18 says -- in the documents. I stand corrected. There is  
19 not something in -- in -- in the documents here that tells  
20 you specifically what those plants are. Ownership of  
21 those plants.

22 Q Well, simply by comparing names. I mean, we --  
23 we know the first three plants are AgraMark plants and  
24 AgraMark is listed on page 19 as a -- as a cooperative

1 with producers pooled on the Northeast Order, correct?

2 A You could make that assumption, sure.

3 Q Okay. Well, using that approach, you've got  
4 three AgraMark plants listed on page 45 as supply plants,  
5 correct?

6 A Correct.

7 Q And AgraMark is listed as a cooperative on page  
8 19, correct?

9 A Correct.

10 Q You've got Dairy Farms of America having a  
11 plant on page 45 and they are also listed on page 19,  
12 correct?

13 A That's correct.

14 Q And next is MK Produce Corporation, which is  
15 listed on page 45 as a supply plant but is not listed on  
16 page 19 as a cooperative, correct?

17 A That's correct.

18 Q And do you know in fact that they're not a  
19 cooperative?

20 (Pause)

21 MR. STEVENS: Your Honor, I -- I -- I don't  
22 -- I don't -- I don't really want to make an objection. I  
23 guess what I'm -- what I'm driving at is that the  
24 documents are presented for the use of the parties here at

1 the hearing. The witness may or may not have personal  
2 knowledge of the answer to the question that's being  
3 asked, but the documents are presented for the parties to  
4 use to -- to -- to decipher this information.

5 JUDGE BAKER: That's what Mr. Rosenbaum is  
6 trying to do. He's trying to find out what supply plants  
7 were owned by cooperatives and which ones were not.

8 MR. STEVENS: Well, let him ask the  
9 cooperatives. Let him ask the individual companies and --  
10 and -- and they would be the ones to give out that  
11 information, not the market administrator.

12 JUDGE BAKER: Yes, but if the market  
13 administrator knows, why would he be reluctant to reveal  
14 that information?

15 MR. STEVENS: Because the co-ops may object.

16 JUDGE BAKER: Well then, they should object.  
17 But maybe they don't object. I -- I don't know. I don't  
18 want to get into evaluating this other than whether Mr.  
19 Fredericks knows as a fact whether or not some of these  
20 supply plants are owned by co-ops or not.

21 BY MR. ROSENBAUM:

22 Q Back to my question. Do you know whether MK  
23 Trading Corporation is a co-op or non-co-op?

24 MR. STEVENS: Your Honor?

1 JUDGE BAKER: Yes?

2 MR. STEVENS: The question -- I mean, I'm --  
3 I'm getting from the question that the -- the question is,  
4 do they own the plant. The question of who owns the  
5 plant, it could be owned by a number of entities. It may  
6 not be 100 percent owned by a cooperative. I don't know.

7 MR. ROSENBAUM: Your Honor, this is -- this is  
8 called coaching the witness, I think, Your Honor. Either  
9 the witness knows or he doesn't know. We can --

10 MR. STEVENS: Well, I can direct him not to  
11 answer also if we want to -- we want to play that game.  
12 But -- but the point here is that these -- these documents  
13 are presented for the use of the parties. Let the parties  
14 ask the entities as to their business operations.

15 This -- this individual is not in a position to  
16 know the percentage of ownership of a -- of a company of a  
17 plant. And so to -- to ask him, does the co-op own the  
18 plant, he may or may not know that. I -- I -- I don't  
19 know that he does know it.

20 JUDGE BAKER: Well, now you have made a  
21 representation that Mr. Fredericks is not in a position to  
22 know whether or not these supply plants are owned by co-  
23 ops. You've made that representation.

24 And Mr. Rosenbaum, without representation, I

1 don't know what else we can do.

2 MR. ROSENBAUM: Your Honor, I don't yet know  
3 whether the witness knows the answer to the question or  
4 not. And -- and if he has information that's useful for  
5 the hearing, I think I'm entitled to ask him about it.  
6 I'm drawing upon the information that he's provided but  
7 I'm seeking some -- I'm seeking to elucidate that, which  
8 is the whole reason why we allow cross examination with  
9 respect to the data put in by the market administrators.

10 JUDGE BAKER: Well, let's see what the witness  
11 knows and what he believes can be discerned from this  
12 document which has been identified as Exhibit 5 and 5-A.

13 BY MR. ROSENBAUM:

14 Q Let me -- let me rephrase the question in a way  
15 that may make it simpler. You described who the operating  
16 handler is with respect to each of these plants, correct?

17 A That's correct.

18 Q Okay. Let me -- and am I correct that with  
19 respect to MK Trading Corporation and Fleur de Lait -- I'm  
20 sure I'm mispronouncing that -- and Queensboro Food  
21 Products, those three are listing -- listed as being  
22 operating handlers of supply plants as of May 2001 but do  
23 not appear on page 19 with respect to your list of  
24 cooperative -- with producers pooled on the order?

1           A     That's correct.

2           Q     All right.  Have you conducted any -- strike  
3     that.  Have you made any determination whether any non-co-  
4     op supply plant would qualify for marketwide service  
5     payments under Proposal Number 7?

6           A     Yes.  We went -- we looked at the criteria in  
7     the Proposal Number 7 and evaluated all handlers against  
8     that criteria.  And the ones that -- that met     -- met  
9     the criteria were the ones that we listed on --

10                   (Pause)

11                   BY MR. ROSENBAUM:

12           A     -- on Appendix 10, page 81.

13           Q     I appreciate that.  And the conclusion one  
14     would draw is that you do not list as qualifying for the  
15     payment MK Trading Corporation or Fleur de Lait or  
16     Queensboro, correct?

17           A     That's correct.

18           Q     And those are the three entities that appear on  
19     page 45 as being supply plants and yet do not appear on  
20     page 19 as being cooperatives, correct?

21           A     That is correct.

22           Q     And conversely, am I correct that every supply  
23     plant listed on page 45 that is operated by a cooperative  
24     is listed on page 81 as qualifying for the marketwide

1 service payment?

2 A The supply plant is not but the cooperative is.  
3 Cooperative handler.

4 Q The -- the -- every time that a co-op is the  
5 operator -- strike that.

6 You make that clarification because the  
7 qualifications with respect to the entity as a whole as  
8 opposed to an individual plant, is that right?

9 A That's correct.

10 Q Now, on page 54 of Exhibit 5 you list some  
11 partially regulated plants, correct?

12 A Yes.

13 Q And these would be Class 1 plants, is that  
14 correct?

15 A These would be partially regulated distributing  
16 plants, yes.

17 Q But by definition, a partially regulated plant  
18 is a Class 1 plant, correct?

19 A That's correct.

20 Q All right. And accordingly, these plants are  
21 selling Class 1 milk just like any fully regulated Class 1  
22 plant would be, correct?

23 A They are selling Class 1 milk but they're not  
24 fully regulated, that's correct.

1 Q Okay. And you include as owning the partially  
2 regulated plants Maryland and Virginia Milk Producers, a  
3 cooperative, is that correct?

4 A As -- as an association with the Marvamaid  
5 facility -- plant in Newport News, that's correct.

6 Q Okay. And they are one of the co-ops who would  
7 qualify for marketwide service payments according to your  
8 list on page 81, correct?

9 A That is correct.

10 Q And similarly, you list Upstate Milk  
11 Cooperative as operating a -- a partially regulated Class  
12 1 plant on page 54?

13 A Correct.

14 Q And they are also an entity that would qualify  
15 to receive marketwide service payments according to your  
16 list on page 81?

17 A That is correct.

18 MR. ROSENBAUM: That's all I have at this time,  
19 Your Honor.

20 JUDGE BAKER: Thank you, Mr. Rosenbaum.

21 Mr. Beshore, did you have some questions?

22 MR. BESHORE: Yes, I do. Thank you, Your  
23 Honor.

24 CROSS EXAMINATION

1 BY MR. BESHORE:

2 Q Mr. Fredericks, I'd like to first go to your  
3 correction sheet, if I might, for a moment. Taking  
4 Correction 9 and -- my question relates to the footnote  
5 that is noted in -- in Correction 9 and -- and similar  
6 footnotes appear on many of the tables which itemize a  
7 number of specific categories of -- of bulk -- bulk  
8 commodities with different identifications. And they're  
9 quite precise, apparently. There are quite a number of  
10 different categories.

11 And I'm wondering -- I don't know that there is  
12 any particular significance to any of these categories,  
13 but I wonder if you could tell us what the difference is  
14 for the record, please? For instance, Footnote 9  
15 identifies bulk whole milk, bulk nonfat milk, and bulk raw  
16 milk. How are those categories differentiated,  
17 particularly bulk whole milk versus bulk raw milk?

18 A Bulk whole milk or bulk nonfat or lowfat milk  
19 describes in our system plant transfer of bulk quantities  
20 of these products. Bulk raw milk would be -- could be  
21 diversions of Cooperative 9(c) milk or proprietary handler  
22 milk to supply plants.

23 Q Well, so, is bulk whole milk -- when something  
24 is identified as bulk whole milk, does that mean that it -

1 - that it -- it has necessarily been received at a plant  
2 and then processed in some way and transferred to another  
3 plant?

4 A It's come to a plant.

5 Q Okay. Is it -- does it imply that it has been  
6 processed in any way, standardized or pasteurized?

7 (Pause)

8 BY MR. BESHORE:

9 A I'm not certain.

10 Q Okay. But bulk raw milk means milk that was  
11 delivered directly from the farm to the given plant?

12 A That's correct.

13 Q Now, what is bulk concentrated milk?

14 A That obviously has gone to a plant and has --  
15 has had some of the water removed from it and it is  
16 shipped in a bulk form.

17 Q And how -- how's that differentiated from bulk  
18 condensed or bulk skim condensed?

19 A I don't think I list concentrated milk. I  
20 think it's bulk condensed milk or bulk skim condensed.  
21 And -- and --

22 Q Well, Footnote 9 -- or -- I'm sorry.  
23 Correction 9 has as its last category there bulk  
24 concentrated milk. And I just wonder, what's the

1 difference between bulk concentrated milk and bulk  
2 condensed milk, if there is one?

3 A They're synonymous in this -- in this -- in  
4 this case here.

5 Q Bulk skim condensed would be just what it  
6 implies; that is, the fat -- the butter fat having been  
7 skimmed off?

8 A Skimmed off, correct.

9 Q Okay. Thank you. Now, could you turn to page  
10 19 of Exhibit 5 which is titled, "Cooperatives with  
11 Producers Pooled on the Northeast Order, July 2002." The  
12 -- am I correct that these cooperatives listed on page 19  
13 are not necessarily handlers under the order?

14 A That is correct.

15 Q Would all of the cooperatives who are handlers  
16 be the -- be listed on page 18 under the section "9(c)  
17 Handlers List"?

18 A Yes, they would, for that respective month that  
19 you're -- you're talking about, month and year you're  
20 talking about, correct.

21 Q But for -- for July 2002, if you compared the  
22 list on page 19 with the list of 9(c) handlers on page 18  
23 identified with a -- with a "one" for July of 2002, "one"  
24 meaning that they were a handler for that month?

1           A     That's correct.

2           Q     Okay. Any -- any handler not listed on page 18  
3 but also listed on page 19 as a cooperative which was not  
4 pooling its members' milk, is that correct?

5           A     That is correct.

6           Q     Okay. There's an asterisk and, forgive me if  
7 you explained this in direct from -- with Mr. Stevens,  
8 several of these cooperatives have asterisks noted on them  
9 as not having a USDA Capper Volstead voting determination.  
10 What -- what does that mean?

11          A     The Capper Volstead Act provides certain rights  
12 and privileges to co-ops that meet the qualification  
13 criteria, and that's -- that's what we've noted here.

14          Q     Does that mean that in a -- in a referendum  
15 under the order those organizations are not entitled to  
16 vote for their members, the ones that do not have a Capper  
17 Volstead voting determination?

18          A     That is -- that is one thing it means.

19          Q     Now, if one of those organizations is a --  
20 listed as a cooperative, you say, with producers pooled,  
21 if they're a -- if they're on this list, they're not a  
22 handler, they can't vote. What are they doing with  
23 respect to the marketing of their members' milk under the  
24 order, if anything?

1           A     I'm not certain what you're -- what you mean,  
2     what are they doing.

3           Q     Does this list indicate or imply that the  
4     organizations are engaging in any -- any marketing  
5     activities under the order?  The list on page 19?

6           A     It doesn't imply that they are or they are not.

7           Q     Are there any cooperatives which are operators  
8     of pool plants but not 9(c) handlers under the order?  Let  
9     me -- if they are, would they appear on -- on the plant  
10    listing that -- that you have provided here?

11          A     Yes.

12          Q     So we could -- we could review that and  
13    determine whether any of these organizations which are not  
14    9(c) handlers but are nevertheless listed as co-ops happen  
15    to be handlers as the operator of a plant?

16          A     That's correct.

17          Q     Okay.  Do you happen to know how many -- how  
18    many cooperatives are listed on -- on page 19?

19          A     I think it's like --

20          Q     We -- we could all count them.  I'm sorry?

21          A     Eighty or 81 or 79 to 81.  I can't remember.  
22    It does change a bit from month to month.

23          Q     Thank you.  Now, going to -- going to page 25,  
24    which is the non-pool and other order pool plant list for

1 July 2002, I -- I just -- I noticed -- happened to notice  
2 on here that Coulter -- Coulteryon Dairy in Pittsburgh is  
3 listed as a non-pool manufacturing plant. Are you -- is  
4 that a correct -- correct designation for that facility?

5 (Pause)

6 BY MR. BESHORE:

7 A I believe it is. If -- if -- I'll verify that  
8 -- that is that case. If you know something different  
9 that points in that direction, then I'll verify that.

10 Q Well, I think there's a distributing plant by  
11 that or a similar name in the western Pennsylvania area  
12 and I thought that's what -- that's what that might be.

13 If you go to page 31, which is the geographic -  
14 - the map of the June 2002 handler -- handler list? I --  
15 I was having trouble matching up the map -- some of the  
16 map numbers with the list. And I don't know if I'm  
17 looking at the right list or the wrong list.

18 But for instance, Number 160 in western  
19 Pennsylvania or 158 in north central Pennsylvania or 156,  
20 northeastern Pennsylvania, I -- the following list ends at  
21 150, at least in my copy of the exhibit.

22 A The -- that index that goes with that map on  
23 page 31 is sorted by alphabetic name of the -- of the  
24 plant.

1 Q Oh, I gotcha.

2 A The map number is not a sequential number. So  
3 the --

4 Q So that 160 is on there and I -- I wasn't  
5 reading it right. Okay. Thank you. That -- that helps.

6 Could you turn to the payment -- "Selected  
7 Reporting and Payment Date" table on page 42, 43, and 44?

8 (Pause)

9 BY MR. BESHORE:

10 Q If you look at the lines for payment to, and  
11 I'm just starting with the year 2000, payment to producer  
12 settlement fund and payment from producer settlement fund,  
13 the third and fourth lines down on the -- on that document  
14 on page 42, there are three months during the year when  
15 the -- the date for payment in and the date for payment  
16 out is the same day, if I'm reading it correctly. Is that  
17 -- is that accurate?

18 A That's correct.

19 Q Okay. And does that present a problem in  
20 administration of the producer's settlement fund which  
21 Proposal 4 is intended to address?

22 A Eric Rasmussen, the market administrator, is  
23 going to testify in more detail about -- about Proposal 4  
24 --

1 Q Okay.

2 A -- with -- with this calendar composition at a  
3 later time. If -- if it's okay, I'll defer questions  
4 then. Is that --

5 Q To the boss? Defer to the boss? That's fine.

6 A Defer to the boss.

7 Q Okay.

8 A Thank you.

9 Q In any event, the table shows that under the  
10 present order regulations the date for funds to come in  
11 and go out is the same day?

12 A That is absolutely correct, yeah.

13 Q Okay. Now, turning to page 46.

14 (Pause)

15 BY MR. BESHORE:

16 Q I want to make sure that I understand the  
17 makeup of -- of these numbers. The document -- the table  
18 is titled, "Bulk Milk Received at Northeast Order Pool  
19 Supply Plants." Does that include and is it limited to  
20 milk physically received at those facilities?

21 A What else are you implying?

22 Q Milk that is, you know, diverted from or deemed  
23 received. From one side of a split plant to another, for  
24 instance.

1           A     That scenario you just mentioned could occur.  
2     I'd have to look at the data for those respective months  
3     to see if there were any one instance occurring in those  
4     months in question.

5           Q     Okay. Well, I understand the footnote that  
6     said that it includes transfers and diversions of -- of  
7     bulk milk, which I understood to be diversions to the  
8     supply plant.

9           A     Right.

10          Q     And you're not certain whether it also could  
11     include diversions from the supply plant to a non-pool  
12     plant?

13          A     That could be included in there.

14          Q     Okay. Are --

15          A     It would --

16          Q     -- are you --

17          A     -- diversions.

18          Q     Are you going to be -- can you determine  
19     whether those -- whether any transactions of that sort are  
20     in fact included in those numbers?

21          A     Diversions of -- of milk from a supply plant to  
22     a --

23          Q     Non-pool plant.

24          A     -- non-pool plant? In -- let me think. That

1 would be included in that number.

2 Q It -- it would be?

3 A Yes.

4 Q Okay. So those numbers then represent the  
5 total supply of milk associated with those supply plants  
6 received or diverted from?

7 A That's correct for bulk milk.

8 Q Okay. Thank you. Now, if you'd turn to page  
9 49?

10 (Pause)

11

12 BY MR. BESHORE:

13 Q In this -- in this case, do I understand from -  
14 - from the title that the 24 million pounds reflected from  
15 these sources, from these non-pool plants, in May 2001 was  
16 milk physically received at the non-pool plants and  
17 delivered to Order 1 pool plants?

18 A That's correct.

19 (Pause)

20 BY MR. BESHORE:

21 Q Okay. Would you turn to page 57, please?  
22 Appendix 3-B?

23 (Pause)

24 BY MR. BESHORE:

1           Q     This table shows transfers of packaged fluid  
2     milk products from the list of partially regulated plants  
3     to the listed pool distributing plants, is that correct?

4           A     That is correct.

5           Q     Now, if one of those partially -- one of the  
6     transfer or partially regulated plants had itself received  
7     packaged milk from another facility and had retransferred  
8     that packaged milk to a pool distributing plant under  
9     Order 1, would those movements be included in these -- in  
10    this table?

11          A     I'm going to have to verify that for you. I  
12    believe that would be a crew -- correct since we're  
13    talking about packaged transfers. But I'm -- but I'm  
14    uncertain whether that would --

15          Q     Okay. Well, let me ask it another way and  
16    maybe -- maybe it won't clarify it, but it's more  
17    precisely -- to more precisely indicate what I'm  
18    interested in.

19                 Is there any -- any language which would  
20    segregate or identify in any way in these statistics the  
21    source of the packaging, what plant packaged the milk  
22    which was transferred from the partially regulated plant  
23    to the pool distributing plant?

24                     (Pause)

1 BY MR. BESHORE:

2 A No, there's not.

3 Q Okay. If you'd -- if you'd turn then to page  
4 61, Appendix 4-B?

5 (Pause)

6 BY MR. BESHORE:

7 Q Mr. Fredericks, this -- this exhibit indicates  
8 that if Proposal 9 were adopted as you understand it and  
9 it was applied to -- to the operations partially regulated  
10 distributing plants during the months of January through  
11 July 2002, additional pounds would be pooled under the  
12 order?

13 A That's correct.

14 Q Okay. Does that indicate, as it apparently  
15 would, that at least three additional plants -- since  
16 you've showed the volumes, at least three additional  
17 plants would have become pooled under the order that were  
18 not presently pooled?

19 A That is correct.

20 Q Do you know how many additional plants would --  
21 would have become pooled under Order 1 if Proposal 9 were  
22 -- were adopted during these months?

23 A Off the top of my head right now I don't know  
24 the exact number. I know it's more than three. If -- if

1 -- if need be, I can get that by a later date.

2 Q Might -- might they be some of the partially  
3 regulated plants with packaged milk transfers as shown on  
4 the preceding tables at pages 57, 58, and 59?

5 A Yes -- yes, they would be.

6 (Pause)

7 BY MR. BESHORE:

8 A Let me restate that. It could include some of  
9 those partially regulated plants listed on pages 57, 58,  
10 and 59.

11 Q Or, I assume, other partially regulated plants  
12 that are shown as having -- as being partially regulated  
13 during those months on your table of -- plant  
14 classification information earlier in the exhibit?

15 A Yes.

16 Q Okay. Now, the -- the months that are shown on  
17 page 61 are -- let me ask this. Would those -- would  
18 those plants have become pooled as supply plants because  
19 Proposal 9 relates to the supply plant definition?

20 A Yes, they would have become pool supply plants.

21 Q Okay. So if Proposal 9 were adopted, plants  
22 that are presently partially regulated distributing  
23 plants, such as those shown on pages 57, 58, and 59, may  
24 have become pooled under the order as pool supply plants,

1 correct?

2 A Some of those, correct. Yep.

3 Q Okay. And during the months shown on page 61,  
4 those are, what, 10 percent shipping months for supply  
5 plants under the order?

6 A Were supply plants -- that is correct.

7 Q So basically, this would indicate that -- and  
8 presently, a -- a partially regulated distributing plant  
9 must distribute 25 percent of its packaged fluid milk  
10 products in the marketing area to become fully regulated?

11 A Twenty-five percent is the -- is the --

12 Q Is the --

13 A -- cutoff number.

14 Q -- the number. In essence, Proposal 9 would  
15 reduce that to 10 percent in the months of January through  
16 July at least and make it -- make them supply plants? If  
17 they reached 10 percent.

18 A It would lower the number, that's correct.

19 Q I gather there was no request to have those  
20 calculations made for months with higher supply plant  
21 performance requirements? The date on page 61. It was  
22 just requested for those months and that's why you did it  
23 for those months?

24 A It was requested and by agreement with the --

1 the requesting parties, this was the months that we  
2 determined that were -- when to provide 2002 data.

3 Q Okay. Since those plants are qualified supply  
4 plants, if you use the full months, there'd be a different  
5 set of qualification criteria for the amount of packaged  
6 milk that had to be distributed to -- to become fully  
7 regulated?

8 A That is correct.

9 Q Now, if you'd turn to page 62 and 63, which are  
10 -- are your -- which represents information that you  
11 prepared to show the potential impact of Proposals 3 and  
12 6. Is it correct that with respect to Proposal --  
13 Proposal 3 were to be adopted, milk would have been  
14 ineligible for pooling -- milk presently pooled under the  
15 order would have been ineligible for pooling in every  
16 month except the month of September 2001?

17 A That is correct.

18 Q The asterisks just represent less than three  
19 handlers, as the footnote indicates?

20 A That is correct.

21 Q And with respect to Proposal 6 on page 62,  
22 there would only have been four months -- January,  
23 February, August, and September 2001 -- when milk would  
24 have been ineligible for pooling?

1           A     That is correct.

2                     (Pause)

3                     BY MR. BESHORE:

4           Q     Could you turn to page 80, please, Mr.  
5     Fredericks?

6                     (Pause)

7                     BY MR. BESHORE:

8           Q     Now, with -- with respect to this information,  
9     does -- the title indicates that these are diversions from  
10    Northeast Order handlers to other order pool plants. Does  
11    that include both distributing plants and supply plants  
12    under other orders?

13          A     Under the other orders, correct.

14          Q     If the milk is diverted to an other order  
15    distributing plant, does it remain pooled into Order 1 or  
16    does it become pooled under the other order?

17          A     It remains pooled under Order 1.

18          Q     Is there a limitation to that to the extent to  
19    which it is not classified as Class 1 at the -- or is  
20    there any limitation to that in terms of how it's  
21    classified at the other order distributing plant?

22          A     Do you mean the limitation on the amount of  
23    diversions?

24          Q     I'm interested in where the milk's -- milk's

1 pooled, and I guess if you've got -- a diversion is a -  
2 - is a delivery directly from a -- from farms, correct?

3 A That's correct.

4 Q Okay. Now, if it's delivered to an other order  
5 distributing plant, under some circumstances it would be  
6 pooled under the other order, right?

7 A That's right. The -- I mean, the -- the -- the  
8 diversion from this order could be pooled under the other  
9 order if it, you know, met -- met the criteria, basically,  
10 of the other order that is the receiving plant --

11 Q Well, by definition, those are other order  
12 plants, right?

13 A Could you restate the question?

14 Q Well, my -- what I'm really trying to learn is  
15 whether these movements remained pooled under the -- on  
16 the originating order or whether some of these volumes  
17 became pooled at the destination order.

18 A These volumes on this table all remained Order  
19 1 milk. They were not pooled on the other order. That  
20 would have been --

21 Q Okay. That's the "Diversions To" column?

22 A That's correct.

23 Q Or set of columns. How about the "Diversions  
24 From" column?

1           A     Similar scenario, except for those were  
2     diversions from the other orders as listed in that first  
3     column.

4           Q     And they remained pooled under the other  
5     orders?

6           A     That is correct.

7           Q     So, the extent those are diversions to  
8     distributing plants, they would have been at requested  
9     Class 2 or 3 utilizations in order to attain pooling  
10    status from the originating order?

11          A     That -- that's right.

12          Q     Would you turn to page 85, please?

13                   (Pause)

14                   BY MR. BESHORE:

15          Q     Okay. Now, this -- this table was assembled at  
16    our -- our request by your office, correct?

17          A     That's correct.

18          Q     And is it correct that the -- the shaded  
19    columns, which are the disposition columns as opposed to  
20    the receipt columns, represent the volumes of milk that  
21    were used to produce the indicated product?

22          A     That is correct.

23          Q     Okay. And although the label says -- the  
24    heading says, "Pounds of Product," it's not pounds of

1 product manufactured, it's pounds of milk used to produce  
2 the indicated products?

3 A That is correct.

4 (Pause)

5 BY MR. BESHORE:

6 Q Now, what's -- could you turn to page 86,  
7 please?

8 (Pause)

9 BY MR. BESHORE:

10 Q Again, this was a set of -- of data you  
11 compiled at -- at our request. If one wanted to estimate  
12 the -- first of all, this table just represents pounds --  
13 proportions of milk delivered to distributing plants. It  
14 doesn't reflect the classification of the milk in any way,  
15 correct?

16 A That is correct.

17 Q Okay. Now, if one wanted to estimate the --  
18 the utilization of the milk received at distributing  
19 plants just on an aggregate marketwide basis, would 90  
20 percent utilization for Class 1 at distributing plants on  
21 an aggregate marketwide basis be a fair estimated Class 1  
22 utilization, in your judgment?

23 A In my judgment, a range of, say, 85 to 90  
24 percent would be -- would be -- for -- for -- that is a

1 stand-alone Class 1 distributing plant, not system or unit  
2 plants which we have in the Northeast Order.

3 Q Right.

4 A If you need a more accurate number, I can  
5 provide that.

6 Q Okay. Eighty-five to 90 percent would be the  
7 range --

8 A That's correct.

9 Q -- for stand-alone distributing plants. Okay.  
10 (Pause)

11 MR. BESHORE: Thank you, Mr. Fredericks.

12 JUDGE BAKER: Thank you, Mr. Beshore. Are  
13 there other questions for Mr. Fredericks? Mr. English?

14

15 CROSS EXAMINATION

16 BY MR. ENGLISH:

17 Q Mr. Fredericks, I'd like to start, actually,  
18 with Proposal 9 for a moment and some of the questions  
19 that Mr. Beshore asked.

20 In preparing the table and in looking at  
21 Proposal 9, you concluded, did you not, that one or more  
22 plants presently regulated as partially regulated plants  
23 would now qualify as a supply plant under Part (c) of  
24 1001.7, correct?

1           A     That's -- you're referring to the information  
2 presented at page 61?

3           Q     Yes.

4           A     Yeah, that's correct.

5           Q     So hypothetically speaking, a -- let me back  
6 up. Would you agree with me that there are partially  
7 regulated plants that are -- whose volume is included on  
8 page 61, under the assumption that Proposal 9 is adopted  
9 or whatever the terms of Proposal 9 would be if it were  
10 adopted, that are what you would call a distributing  
11 plant?

12          A     Currently a partially regulated distributing  
13 plant.

14          Q     And a distributing plant is defined under Part  
15 1000.5 of the order as being a plant that is approved by a  
16 duly constituted regulatory agency for the handling of  
17 Grade A milk at which fluid milk products are processed or  
18 packaged and from which there is route disposition or  
19 transfers of packaged fluid milk products to other plants,  
20 correct?

21          A     That's correct.

22          Q     If Proposal 9 is adopted, would such a plant be  
23 both the distributing plant under 1000.5 and a supply  
24 plant under 1000.6?

1 A Both a distributing plant and a supply plant --

2 Q Yes.

3 A -- question?

4 Q Yes. Does it not still meet the definitions of  
5 1000.5, which is a national definition for a distributing  
6 plant, but would also now meet the definition of 1001.7(c)  
7 as applied to 1000.6?

8 A When -- I'll answer those things in two parts.  
9 I may need to come back with you for some more data. I --  
10 my -- my understanding is when you -- when you hit one of  
11 the -- one of the criteria, that's which you become and it  
12 ends at that point. But I'm going to have to --

13 Q But wouldn't it be the case that you'd now have  
14 a conflict with the milk regulation and you'd essentially  
15 be both things at once?

16 A I -- I can't answer that.

17 Q Okay. Fine. Going to page one of Exhibit 5  
18 and starting with the columns for Maine, do you -- would  
19 you agree with me that there was a change in the  
20 regulatory status of a facility in Maine affecting the  
21 Maine producer milk from January to February of 2001, that  
22 a plant became a fully regulated facility under the order?

23 I'll help you out. Oakhurst Dairy was not a  
24 fully regulated plant under Order 1 until February of

1 2001, is that correct?

2 (Pause)

3 BY MR. ENGLISH:

4 A That is correct.

5 Q So for instance, that would explain -- let me  
6 back up. In May of 2000, there's 44.9 million pounds of  
7 producer milk for Maine and in May 2001 there's 56.4  
8 million pounds of producer milk. There wasn't suddenly 12  
9 million new pounds of milk being produced in Maine,  
10 correct?

11 A That is correct.

12 Q At least a significant portion of that  
13 difference would be associated with that plant becoming  
14 fully pooled on Order 1, correct?

15 A I would assume that would probably be the case.

16 Q Looking at Virginia for 2000, there's a  
17 significant drop from April to May. Is there a plant  
18 explanation for that as well? There's a drop of almost 17  
19 million pounds, and I assume that there weren't 17 million  
20 pounds less milk being produced in Virginia in July than  
21 in June.

22 A Without looking at the list of pool plants and  
23 handlers for that month in question as well as perhaps  
24 other orders, neighboring orders, I couldn't -- I couldn't

1 tell you exactly what was behind that change.

2 Q Turning to Rhode Island, for 2002, in the total  
3 there's a zero even though there's restricted data January  
4 through July. Is -- is that zero an error and it should  
5 be restricted or should we conclude that there's zero milk  
6 in Rhode Island now for 2002?

7 A Restricted data.

8 Q Turning to the Other States data, and you're  
9 welcome to look at page 87 which I think is what -- a  
10 delineation of this. And looking at West Virginia for a  
11 moment, West Virginia has two months in which it is part  
12 of the restricted data. When I look at 87, I did not see  
13 West Virginia -- a footnote including West Virginia. To  
14 the extent it was omitted in page 87, would it be correct  
15 that it was part of data in 87 for June 2001 and January  
16 2002?

17 A January 2002 it is footnoted in Footnote Number  
18 8.

19 Q All right. I apologize. I missed that one.

20 But the -- but it's -- Footnote 6 is continuous  
21 for a period of months in 2001. To be correct, there --  
22 West Virginia at least for the month of June should have  
23 been listed?

24 A To be correct, you -- you -- you appear

1 correct. That is right.

2 Q Going to 87 and the first -- the only months,  
3 August through November of 2000, the first months when --  
4 when that milk appears, there's a Dannon facility out in  
5 Utah that is regulated under this order, correct?

6 A That is correct.

7 Q Would it be correct to assume that -- that  
8 since the Utah facility was pooled in each of those four  
9 months but alternative plants were pooled otherwise,  
10 including Idaho in August and November, that it would be a  
11 fair characterization to assume that -- that that Utah  
12 facility made a bulk of its September and October number  
13 or at least that it's not larger -- much -- significantly  
14 larger than the September number when looking at July and  
15 November?

16 A Could you please repeat?

17 Q Sure. Would it be a fair characterization,  
18 without divulging the exact size of the Dannon facility,  
19 to -- to state that the Dannon facility probably does not  
20 process more than 2.7 million pounds of producer milk  
21 given that was the volume in September and October but  
22 there was significantly more volumes in August and  
23 November?

24 (Pause)

1 BY MR. ENGLISH:

2 Q Let me put it another way. Would it be fair to  
3 say that the bulk of that milk that is pooled in August  
4 and November above 2.6 million was Idaho milk?

5 A You know, without looking at the detail I  
6 cannot say that definitively.

7 Q Tables 1 through 3 -- pages one through three  
8 do not include by definition non-pool producers, correct?

9 A That's right. These are pool -- pool producers  
10 represented here.

11 Q Can a producer for the same month be a producer  
12 on Order 1 and also a producer on another order?

13 A That is possible.

14 Q Do you know for a fact whether that occurs in  
15 this market?

16 A In what month?

17 Q In this market. Any -- at any time.

18 A Yes, that has happened one time.

19 Q So the provision for a producer for other  
20 markets does not necessarily exclude a producer from --  
21 from qualifying simultaneously on at least two orders  
22 under -- under the Federal Order Program, correct?

23 A The Northeast Order provision that specifies  
24 that does not really speak to that, correct.

1           Q     So if we're -- if we look later at data from  
2     other market administrators with respect to -- to number  
3     of producers from, say, the state of Pennsylvania, we  
4     couldn't simply add that to the number of producers pooled  
5     under this order from Pennsylvania and have a true picture  
6     of the number of producers because we may be double  
7     counting some, correct?

8           A     On the producer count that is correct.

9           Q     As to milk, however, that wouldn't be double  
10    counted, correct?

11          A     That's correct.

12                   (Pause)

13

14                   BY MR. ENGLISH:

15          Q     Turning to page 19 and the questions -- some of  
16    the questions that were asked by Mr. Beshore, to the  
17    extent that cooperatives -- I'm looking at the footnote  
18    for a moment. The footnote and those that are noted for  
19    the footnote merely means that those entities have either  
20    not applied for Capper Volstead status for voting and  
21    other order issues or if they applied, conceivably they  
22    were turned down, correct?

23          A     That is correct.

24          Q     It does not mean that those entities are not

1 necessarily Capper Volstead entities? It doesn't mean  
2 that -- that -- just because they have an asterisk doesn't  
3 mean a determination has been made that they are not  
4 Capper Volstead entities, correct? Because they may not  
5 have applied?

6 A They may not have applied and they may not  
7 qualify, that is correct.

8 Q And notwithstanding the question from Mr.  
9 Beshore that if they aren't a number one on page 18 and  
10 they're listed on 19 that the milk's not being approved.  
11 Nonetheless, the heading is cooperatives with producers  
12 pooled under the Northeast Order. So at least some of the  
13 milk represented by those entities would be pooled?

14 A That's right. The milk of those producers that  
15 are members of those cooperatives is being pooled on this  
16 order.

17 Q On page 46, you were asked a series of  
18 questions by Mr. Beshore about what was included in those  
19 numbers and deemed received was -- was part of this issue  
20 when you talked about diversions. But I don't think you  
21 talked about transfer milks. If milk was received at  
22 these plants listed on page 46 but transferred, it would  
23 also be reported here, correctly -- correct?

24 A That's correct.

1 Q Turning to page 49.

2 (Pause)

3 BY MR. ENGLISH:

4 Q These 24,196,000 pound -- 24,196,563 pounds,  
5 how would that milk be accounted for by the order?

6 (Pause)

7 BY MR. ENGLISH:

8 A We -- we -- in our statistics, do you mean?

9 Q Yes.

10 A We have a -- we have a -- an "Other Order"  
11 category on our statistics we publish.

12 Q Would the milk be pooled under the order?

13 A It would be "Other Order" milk, so -- so it  
14 would be pooled on -- you're asking whether it would be  
15 pooled on this order or the other order?

16 Q Well, it's also unregulated, so it says other  
17 order or unregulated. So to the extent it's unregulated  
18 milk, would you --

19 A That wouldn't be pooled.

20 Q It would not be pooled. Would it be priced  
21 under this order?

22 A I'm not certain how that gets priced, to be  
23 honest with you.

24 Q If it's not priced under this order, does your

1 office even audit what is paid on this kind of -- milk of  
2 this kinds of nature, this kind of transaction?

3 (Pause)

4 BY MR. ENGLISH:

5 Q Aren't these transactions basically outside the  
6 order?

7 A They are. They are.

8 Q Okay.

9 A And you know, I'm not certain, to be honest  
10 with you. I'm not involved in the audit function at all  
11 and I can't verify that 100 percent.

12 Q But you believe that those transactions are  
13 basically outside the order?

14 A Correct.

15 Q When there are transactions outside the order,  
16 whether they are from non-pool plants to pool plants or in  
17 reverse, from pool plants going to non-pool plants, do you  
18 know whether there are times in which the prices received  
19 by the handlers are less than what it would otherwise be  
20 order minimums?

21 A There conceivably could be times.

22 Q For instance, if in the flush month a pool  
23 plant needs to dispose of surplus milk, it may dispose of  
24 that milk and receive whatever the market will bear,

1 correct?

2 A That is correct.

3 Q And what the market will bear may very well be  
4 less than, say, Class 3 or Class 4 price, correct?

5 A That is correct.

6 Q Mr. Rosenbaum asked you a series of questions  
7 about who might be eligible or who was eligible to receive  
8 these payments. And turning to page 81 for a moment and  
9 your calculation of estimated total funds deducted from  
10 producer settlement fund at six cents per hundredweight.  
11 For that column or, I guess, for the estimated qualifying  
12 pounds, can you answer Mr. Rosenbaum's question as to  
13 whether or not those estimated qualifying pounds included  
14 pounds pooled from outside the marketing area?

15 A If they were ordered -- if there was pounds  
16 that were pooled on this order, yes, they would be  
17 included.

18 Q So in other words, when you did this  
19 calculation, you didn't do anything to exclude by -- by  
20 way of example milk that was pooled from Minnesota but  
21 physically delivered to a manufacturing plant in Minnesota  
22 and didn't actually be delivered to this order? When you  
23 did these calculations, you didn't make any mechanism to  
24 exclude that if it was one of these qualifying entities?

1           A     That is correct.

2                     (Pause)

3                     BY MR. ENGLISH:

4           Q     On page 82 -- and this is a question that goes  
5     beyond page 82, so it's -- what does it mean by sales of -  
6     - of -- of -- of packaged -- of Class 1? I take it that  
7     was -- that is not including packaged milk transferred to  
8     a facility and then sold. This would be milk received as  
9     bulk and packaged and then sold as Class 1 for these  
10    pages, correct?

11          A     That -- that'd be correct.

12                     MR. ENGLISH: Thank you, sir. That's all I  
13     have at this time.

14                     JUDGE BAKER: Thank you very much, Mr. English.  
15     Are there other questions? Mr. Vetne?

16                             CROSS EXAMINATION

17                     BY MR. VETNE:

18          Q     I'm John Vetne, appearing for Friendship. Mr.  
19     Fredericks, first I want to express my gratitude for you -  
20     - your work here in putting all this stuff together for  
21     us.

22                             You received a number of data requests from  
23     Friendship that aren't included here, correct?

24          A     There is some requests that are not included in

1 the data as presented.

2 Q And some of that was not included because of  
3 discussions with your office and either me or -- or Warren  
4 Shanback because it would have been difficult to assemble  
5 for some period and representative data or representative  
6 months was included instead?

7 A That is correct.

8 Q And some of the material wasn't eventually  
9 assembled because there was an evolution in the proposals  
10 that actually made it from some proponent's desk to the  
11 hearing notice? There were proposals that weren't  
12 accepted for hearing?

13 A That is correct.

14 Q And some requests -- data -- requests came to  
15 your office before the -- the final elimination and they  
16 became not relevant?

17 A That -- that would -- correct.

18 Q Okay.

19 A Your terms.

20 Q And some of it just involved data that you  
21 didn't have or didn't have assembled in a certain form and  
22 couldn't produce, correct?

23 A You're talking about the data that was not  
24 contained here?

1 Q Yeah.

2 A Yes.

3 Q Okay.

4 A Fair assumption -- fair statement.

5 Q I, like Marvin, had a little bit of question on  
6 the difference between bulk raw milk and bulk whole milk.  
7 Is the only difference between the two raw milk being from  
8 a farm and bulk whole milk being -- having hit a plant at  
9 one point and it may also be raw?

10 A That's right. It's how our database enumerates  
11 it and -- exactly right.

12 Q Okay. If -- if milk were received and  
13 standardized to 3.25 percent butter fat and then  
14 transferred, would -- would that be included in the bulk  
15 whole milk?

16 A Bulk whole milk.

17 Q Okay. So the bulk whole milk could be both raw  
18 unstandardized as well as standardized?

19 A It could be. The point is the plant, as you  
20 mentioned.

21 Q If you'd turn with me to page 47 of Exhibit 5,  
22 please? The data for November of 2001 is the most  
23 complete data that we have that's broken out into various  
24 sources of 12-B milk. And for November where we have at

1 least one other category, the volume of dairy farmers for  
2 other markets milk is only 344 million pounds.

3 My question to you, would it be fair to say  
4 that the volume of dairy farmer for other market milk  
5 would -- would generally be a small number for the other  
6 months also as a portion of the aggregate?

7 A The -- in every month, dairy farmer for other  
8 markets also includes producer handler data. So I'd, yes,  
9 definitively say that without looking at the numbers.

10 Q Do you know or have a recollection from your  
11 data whether combined dairy farmer for other market and  
12 producer handler data from month to month can vary  
13 considerably, say from 300 million pounds -- I mean,  
14 300,000 pounds to several million pounds?

15 A It can vary, yes.

16 Q Can it vary by the extreme amount that I  
17 described? To your recollection. And I'm not asking you  
18 to testify to something that you can't recall. I'm just  
19 asking if you do have a recollection.

20 A I know it did vary. Whether -- whether -- I  
21 can't exactly recollect the numbers whether -- the  
22 variation that is presented in this table does not stick  
23 in my mind. I -- I do simply know it does vary and I can  
24 verify that if that's a question, those -- that data.

1 Q Thank you.

2 (Pause)

3 BY MR. VETNE:

4 Q If you recall, Chip English asked you some  
5 questions about plants that might meet both the  
6 definitions for distributing plants in Section 5 of the  
7 general provisions and supply plants in Section 6 of the  
8 general provisions. Do you recall that series of  
9 questions?

10 A Yes, I do.

11 Q Okay. Are you aware that since the advent of  
12 order reform and even previous to order reform that at  
13 least one plant, the Friendship Dairy plant, has at times  
14 served as a supply plant meeting the Section 6 definition  
15 and at all times meeting the Section 5 definition of a  
16 distributing plant?

17 A I'm not aware of that.

18 Q You're not aware of that? Are -- are you not  
19 aware that Friendship Dairies has some Class 1  
20 distribution?

21 A Yes.

22 Q From its plant?

23 A Yep.

24 Q And has always had some Class 1 distribution

1 from its plant?

2 A Yep. I'm aware of that.

3 Q Okay. And are you not also aware that  
4 Friendship has at times qualified as a supply plant?

5 A I'm aware of that.

6 Q Okay. So during those times when it qualified  
7 for a supply plant, it has met both the definition of a  
8 supply plant, one that supplies others with -- with bulk  
9 milk, as well as distributing from its own plant?

10 A The way you just led me through, I understand  
11 and I agree with. I'd have to look at the provisions to -  
12 - to --

13 Q Right. And during those times when it served  
14 as a supply plant, it met the seven -- Section 7(c)  
15 definition of a supply plant while simultaneously meeting  
16 the Section 5 general definition of a distributing plant,  
17 correct?

18 A You know, if you pointed out a month in  
19 particular in question, I could go through and --

20 Q In any month when -- when -- when Friendship  
21 qualified as a pool supply plant, which it has in the  
22 past, correct?

23 A That's correct.

24 Q During that month, Friendship was also a

1 Section 5 distributing plant. If you look at Section 5 of  
2 the order, it's not the pool distributing plant provision,  
3 it just -- just a plant that has distribution.

4 MR. STEVENS: Your Honor, I don't want to  
5 object, but I'd like to point out for the record that -  
6 - that certainly Mr. Vetne's client could testify to these  
7 matters. I think the witness has expressed some  
8 reluctance to -- to make statements that he's not sure of.  
9 Certainly, John's witnesses are in a better position to  
10 state that for the record.

11 JUDGE BAKER: Mr. Vetne, do you agree with Mr.  
12 Stevens' statement?

13 MR. VETNE: Well, I'm not sure that Mr.  
14 Shanback can describe how the market administrator's  
15 office applies its provisions. That's why I'm asking this  
16 witness if he knows.

17 MR. STEVENS: Well, the point is not how he  
18 applies his provisions. The point is whether -- whether  
19 your witness is -- is willing to testify for the record  
20 that they -- that they have qualified during certain  
21 months with certain status.

22 MR. VETNE: Yeah, they're willing to.

23 MR. STEVENS: Well, there you go. There's your  
24 answer.

1 JUDGE BAKER: What -- what is it you're  
2 suggesting that Mr. Vetne do?

3 MR. STEVENS: Well, I -- I -- I'm suggesting  
4 that he present it through his own witness and not ask the  
5 market administrator's witness to speculate as to the  
6 status of his client's plant during any given month during  
7 the year during the course of the hearing.

8 JUDGE BAKER: Well, I don't think speculation  
9 is of value for the secretary in arriving at a decision.  
10 But if the witness knows something is a fact, then there  
11 should be no objection to it.

12 MR. STEVENS: I agree with that. But I think  
13 the witness has expressed some uncertainty as to the  
14 status of the plant, which is why I made the comment.

15 BY MR. VETNE:

16 Q Mr. Fredericks, do you have the order language  
17 in front of you?

18 A Yes, I do.

19 Q Okay. And can you refer to General Provision,  
20 Section 1000.5?

21 A Yes.

22 Q Okay. And from your knowledge of Friendship's  
23 operations, is it not a fact that Friendship is a Section  
24 5 and has been a Section 5 distributing plant for many,

1 many years?

2 (Pause)

3 BY MR. VETNE:

4 A Yeah, it -- it -- I agree with you. It appears  
5 to meet the general distributing plant definition as -- as  
6 you -- as laid out here.

7 Q Okay.

8 (Pause)

9 BY MR. VETNE:

10 Q If you could turn for a moment -- I lost it.  
11 I'm looking for the -- oh, yeah. Here we go. Page 18 and  
12 19, please.

13 (Pause)

14 BY MR. VETNE:

15 Q Now, the -- the -- on page 19, the co-ops that  
16 are not asterisked are -- are co-ops that have made an  
17 application under 7 CFR Part 900 for certain privileges as  
18 a qualifying co-op to vote on behalf of their members. We  
19 -- we went through that. That's correct?

20 A Right.

21 Q Okay.

22 A There were other parts of that act that -- that  
23 -- that, you know, I'm not speaking about but that is one  
24 of the provisions that they --

1 Q Yeah. Now, the list of Section 9(c) handlers  
2 on page 18 is shorter than the list of co-ops without an  
3 asterisk on page 19. Is it not a fact that many of the  
4 co-ops on page 19 are included in a -- multi-co-op  
5 organization on page 18? For example, Allied Federated  
6 Cooperative includes as it -- its component parts several  
7 smaller cooperative associations which are independently  
8 Capper Volstead-qualified co-ops?

9 A That is correct.

10 Q So if -- if there -- to the extent that there  
11 are co-ops on page 19 that have no asterisk but we don't  
12 find them listed on page 18 under Section 9(c) handlers,  
13 there are co-ops that are marketing their milk through  
14 either another cooperative association or through a -- a  
15 federation or a combination of co-ops on page 18?

16 A Or perhaps with -- with a proprietary handler.

17 Q Or they market their milk as a qualified  
18 cooperative association through a proprietary handler, is  
19 that what you're saying?

20 A That's right. Their milk is pooled by the  
21 proprietary handler.

22 Q And for that purpose, would you please turn to  
23 page 86? The second column on page 86 would include  
24 Capper Volstead-qualified voting cooperatives whose milk

1 is pooled by proprietary handlers, correct?

2 A That is correct.

3 Q Okay.

4 A For -- for those co-ops that are pooled by a  
5 proprietary handler.

6 Q Okay. So the second column on page 86 makes no  
7 judgment as to whether the milk is independent producer  
8 milk or cooperative milk. It could be either milk pooled  
9 by the -- proprietary handler?

10 A That is correct.

11 Q And the data represented in the second column  
12 of page 86 further could include some milk by cooperative  
13 associations who have not elected to apply for voting  
14 qualification and other privileges under Part 900?

15 A That is correct. That could apply for Column 2  
16 or 3.

17 Q Okay. Now, if you'll turn with me for a  
18 moment, please, to page 61?

19 (Pause)

20 BY MR. VETNE:

21 Q And in earlier response to questions, you  
22 indicated that the pounds of milk shown as additional  
23 pounds on page 61 includes milk of partially regulated  
24 distributing plants that would become pooled under

1 Proposal 9. Would it be fair to say that the predominant  
2 utilization of those additional pounds that you've  
3 identified would be Class 1?

4 A That's probably a fair statement.

5 Q In preparing this data, you did not include in  
6 your consideration of whether or not to include the pounds  
7 any determination on whether those partially regulated  
8 distributing plant made bulk shipments of producer milk by  
9 diversion or transfer to someone else's distributing  
10 plant, am I correct?

11 A That is correct.

12 Q And would you also agree with me that a bulk  
13 transfer for diversion of raw milk is -- is a function  
14 that more or less defines a supply plant?

15 A That's one -- one thing they certainly do,  
16 correct.

17 Q Okay. So the data in 61 -- on page 61 could  
18 include plants that have no transfer or diversion function  
19 with respect to supplying milk to distributing plants of  
20 other parties?

21 (Pause)

22 BY MR. VETNE:

23 Q Want me to repeat that?

24 A Repeat that, please.

1           Q     Okay. The data in -- on page 61 could include  
2 partially regulated distributing plants that do not for  
3 any of those months -- did not for any of those months  
4 supply any raw or assembled milk in bulk to someone else?

5           A     Without looking at the data, I couldn't tell  
6 you for certain that that's the case or not.

7           Q     Okay. But we do have on page 49, for example,  
8 non-pooled plants that made bulk transfers to plants  
9 regulated under Order 1, correct?

10          A     That's correct.

11          Q     And for the same month, on page 57, we have a  
12 list of partially regulated plants that made packaged milk  
13 transfers. Do you see that?

14          A     Yes.

15                   (Pause)

16

17                   BY MR. VETNE:

18          Q     To the extent -- and we're going to move  
19 through three pages here. To the extent that the data on  
20 page 61 would include plants that are on page 61 because  
21 they supplied milk to a distributing plant --

22          A     You're talking about plants on page 57?

23          Q     I'm talking about the pounds on page 61. Some  
24 partially regulated plant that would become regulated

1 under Proposal 9, okay, and that volume.

2 A Yep.

3 Q To the extent that that regulation was  
4 triggered by transfers to pool distributing plants of  
5 packaged fluid milk, right? We can look at page 57 and  
6 compare it to page 49 to see whether any of those  
7 partially regulated plants also made bulk transfers.

8 (Pause)

9 BY MR. VETNE:

10 A You could -- you could -- you could do that.

11 Q Pardon?

12 A Yes, that would --

13 Q Yes, okay. And you know, for what it's worth,  
14 none of the plants -- the partially regulated plants that  
15 made packaged milk transfers on page 57 also made bulk  
16 milk transfers on page 49. You don't have to go through  
17 the list.

18 A I'll take your word for that. I haven't -- I  
19 haven't looked myself, but.

20 Q All right. Okay. I have a -- a modest  
21 request. Maybe you can do it before the hearing ends. Is  
22 it possible on page 61 to qualify that data further by  
23 including only in that -- the volume that would be  
24 produced on page 61 the volume of plants that had

1 distribution that also performed the traditional supply  
2 plant function of supplying bulk milk by transfer or  
3 diversion to someone else's distributing plant?

4 What -- my objective here is don't necessarily  
5 want Exhibit -- Proposal 9 to regulate partially regulated  
6 plants solely on their basis of distribution. But Exhibit  
7 -- Section 7 refers to supplying other plants. Section 6,  
8 definition of supply plant refers to both supplying milk  
9 to other plants. So I'm looking to find -- find partially  
10 regulated plants, if any, the volume that would become  
11 pooled by plants that serve both function, that have some  
12 bulk milk shipments to someone's Order 1 distributing  
13 plant and have -- route disposition that would meet the  
14 Proposal 9 definition.

15 So if you could look at that after you get off  
16 the stand and let me know off the record if you're able to  
17 qualify this page any further, I'd appreciate that.

18 A Will do. Agreed.

19 Q Thank you very much.

20 JUDGE BAKER: Mr. Vetne, how close are you to  
21 concluding your questioning?

22 BY MR. VETNE:

23 Q I have one more question for you. Are you  
24 going to be around here to be recalled when we get to the

1 pooling provisions if we have some further questions on  
2 Exhibit 5?

3 A Yes.

4 MR. VETNE: Thank you. I have no further  
5 questions now.

6 JUDGE BAKER: Very well. Thank you. It is  
7 time for our afternoon lunch hour. We'll take an hour.  
8 And I have been informed that the hearing room will be  
9 locked during luncheon recess and that it will be safe to  
10 leave materials in the room.

11 When we return, Mr. Fredericks, I hope you have  
12 energy enough to resume the stand in case there are any  
13 more questions.

14 THE WITNESS: If I have to return, I'll be  
15 here. Yes. Thank you.

16 JUDGE BAKER: Very well. Thank you. You can  
17 take an hour for recess -- luncheon.

18 (Whereupon, at 12:30 p.m., the proceedings were  
19 adjourned for lunch, to reconvene at 1:30 p.m., the same  
20 day.)

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A F T E R N O O N   S E S S I O N

1:30 p.m.

Whereupon,

PETER FREDERICKS

having previously been duly sworn, was recalled as a  
witness herein and was examined and testified as follows:

JUDGE BAKER: The meeting will come to -- on

1 the stand. And are there any additional questions of Mr.  
2 Fredericks? Mr. Beshore?

3 MR. BESHORE: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. BESHORE:

6 Q Mr. Fredericks, page 82, Appendix 11 of Exhibit  
7 5, could you go to that for a minute?

8 I want to -- I want to ask you a couple of  
9 questions about -- about this table. And it's -- it's in  
10 response to what I -- what I understood you to -- to  
11 answer in questions from Mr. English earlier. The -- the  
12 first column labeled, "Total Class 1 Sales in the  
13 Marketing Area" on this exhibit represents what? Could  
14 you tell us what all -- what all is in that number?

15 A It's the pool distributing plant sales -- Class  
16 1 sales within the geographic boundary of the marketing  
17 area, the Northeast marketing area.

18 Q Okay. And that would represent all sales --  
19 all route distribution in the marketing area by pool  
20 distributing plants regardless of the sources of the  
21 product being distributed?

22 A That is correct.

23 Q Okay. The total Class 1 utilization, which is  
24 the right-hand column, is a different number than producer

1 milk classified as Class 1 under the order for that  
2 particular month, is it not?

3 A That is correct.

4 Q Okay. And one of the reasons for that may well  
5 be that pool distributing plants distributed in the  
6 marketing area packaged product which they receive from  
7 plants outside the marketing area but distributed in the  
8 marketing area?

9 A That is one factor, yes.

10 Q Okay. So that if pool distributing plants  
11 receive packaged fluid milk products from, for instance,  
12 partially regulated distributing plants, say a plant in  
13 Pennsylvania that's regulated by the Pennsylvania Milk  
14 Marketing Board and only partially regulated by Order 1.  
15 If it transferred milk to a fully regulated Order 1  
16 distributing plant which then redistributed those sales in  
17 the Order 1 marketing area, they would be reflected in the  
18 total in this table?

19 A In the table on page 82, that's correct.

20 MR. BESHORE: Okay. Thank you.

21 JUDGE BAKER: Thank you, Mr. Beshore. Are  
22 there other questions of Mr. Fredericks? Yes?

23 MR. ARMS: My name is David Arms. I'm an  
24 economic consultant for the New York State Dairy Votes. I

1 just have a few clarifying questions, Your Honor, I'd like  
2 to ask.

3 JUDGE BAKER: Indeed.

4 CROSS EXAMINATION

5 BY MR. ARMS:

6 Q In Exhibit 5, page eight, you list under "Pool  
7 Supply Plants," for example, H.P. Wood Company in Vernon  
8 and the Friendship Dairies in Friendship? Under the pool  
9 supply plants on page eight?

10 A Yes.

11 Q Would you agree with me that the listing  
12 January through July and retention of pool supply plant  
13 status in those months might have occurred because they  
14 had automatic pooling grandfathered to them under the  
15 prior New York-New Jersey Order? In other words, if they  
16 fully qualified in the preceding months, July -- the old  
17 order used to refer to July. If they fully qualified the  
18 previous fall, they were then subject to automatic pool  
19 status without sending -- without shipping additional  
20 quantities of milk in that period?

21 A That is correct, when the order was -- the  
22 inception of the order -- Northeast Order in January of  
23 2000.

24 Q Right. So it stands to reason that that is why

1 they retained the pool supply plant status at least with  
2 respect to Vernon for those months?

3 A I would suspect that is the correct answer,  
4 yes.

5 Q Okay. As far as August, the same data shows  
6 that the Hood Vernon plant is not listed as a pool supply  
7 plant, isn't that correct?

8 A That's correct.

9 Q Its status -- do you know what its status  
10 shifted to in -- in your data? Let me ask the question  
11 this way. Isn't it true that the Hood Vernon plant became  
12 a pool distributing plant commencing in August of that  
13 same year?

14 A That is correct.

15 Q And with respect to the Friendship plant, that  
16 plant shifted to non-pool status, did it not?

17 A That is correct.

18 Q Is it your knowledge or would you again agree  
19 with me that as far as the Hood Vernon plant that it  
20 qualified beginning in August as a pool distributing plant  
21 simply by virtue of its exercising unit pooling status?  
22 In other words, hitching on with the Agawam -- the Hood  
23 Agawam plant to qualify as one during those months?

24 A I'm aware the Hood Vernon and Hood Agawam plant

1 are considered a -- a unit --

2 Q A unit.

3 A -- plant, correct.

4 Q Normally when you think of pool distributing  
5 plants listed as being primarily plants that are Class 1  
6 bottling plants, isn't that correct?

7 A That's correct.

8 Q In the case of some plants in the Northeast  
9 Order, however, isn't it true there are some plants that  
10 do qualify for producer distributor plant status that in  
11 fact have very heavy milk utilized in other classes  
12 besides Class 1, such as Vernon?

13 A Please rephrase your question. Producer  
14 distributor, is that --

15 Q Well, you -- you agreed with me, I think, that  
16 in most people's minds a pool distributing plant is  
17 primarily a Class 1 bottling plant?

18 A That's correct.

19 Q Okay. In the case of -- of the Hood Vernon  
20 plant, would you consider that plant a -- in the same  
21 category as primarily Class 1 bottling plant?

22 A No, I would not.

23 Q It qualifies by virtue of its linkage in unit  
24 pool status to become a pool distributing plant?

1           A     That's correct.

2           Q     Is that also true with respect to some of the  
3 other plants that you've listed here under "Pool  
4 Distributing Plant Status"? For example, can you tell us  
5 how the Dannon Company in West Jordan gets classified as a  
6 pool distributing plant?

7           A     It simply meets the pool distributing plant  
8 order -- order requirements, order regulations based on --  
9 based on the -- on the -- on the requirements of the  
10 order, route sales, et cetera.

11          Q     Is the Dannon plant primarily a Class 2  
12 operation?

13          A     They -- they -- there's -- there's different  
14 products that are made at that plant.

15          Q     Okay. Are there other plants in this list or  
16 other handlers in this list that have plants that are pool  
17 distributing plants that in fact have a lot of  
18 manufacturing in them?

19          A     I'm aware of at least one.

20          Q     Could you point it out for the record, please?

21          A     I -- I can't divulge the name of the plant.  
22 That's -- that's -- information.

23                   (Pause)

24                   BY MR. ARMS:

1           Q     Do you think that there -- the same situation  
2 might be true with respect to any of the Crowley plants  
3 listed? For example, Artport?

4           A     I'm not going to divulge the name --

5           Q     Okay.

6           A     -- of the handler that -- that -- that's doing  
7 that.

8           Q     But you have essentially agreed with me that  
9 most -- most of the plants listed as producer distributing  
10 plants are essentially Class 1 bottling plants but there  
11 are exceptions, is that correct?

12          A     That's correct.

13          Q     Incidentally, I want to clarify one other thing  
14 in Table 1. Going back to the pool producers, the listing  
15 of producers by state. I want to make sure -- get it  
16 straight in my mind that this listing of pool milk by  
17 state where it may involve producers who are pooled under  
18 more than one order in a given month, that this table  
19 reflects only the pool milk that was pooled under this  
20 order and not any of the pool milk from the same producers  
21 that may have been pooled under another order. Is that  
22 true?

23          A     That is correct.

24          Q     The listing of pool supply plants on page 16.

1 In response to questions raised by Attorney Rosenbaum, you  
2 didn't identify this -- the -- whether certain plants were  
3 proprietary or cooperative with respect to MK Trading,  
4 Queensboro Farm Products, and Fleur de Lait in New  
5 Holland, isn't that correct? You didn't identify them as  
6 either cooperative or proprietary?

7 A That is correct.

8 Q Okay. With respect to Detrick's Milk Products,  
9 LLC, in Newbury Center and Dairy Marketing Services, LLC,  
10 in Middlebury Center --

11 A It's in Reading.

12 Q -- that's listed for the year 2002, can you  
13 tell us the distinction here between these two plants that  
14 were before listed as Detrick's Milk Products, LLC in both  
15 cases? Why one is now listed as Dairy Marketing Services,  
16 LLC? And can you tell us the significance of that?

17 A No -- no, I can't. That's -- this information  
18 is derived from what is reported to us. Changes in  
19 handler names or operating handlers is -- is -- is  
20 information we get and it's --

21 Q I guess I'm asking for clarification in the  
22 record that there may be an instance here where it's  
23 neither fish nor fowl. Let me explain.

24 MR. BESHORE: Your Honor?

1 JUDGE BAKER: Yes.

2 MR. BESHORE: The -- Mr. Gallagher will testify  
3 and certainly is going to be available to -- with  
4 knowledge of -- of those matters. Mr. Arms could inquire  
5 of him at the time.

6 JUDGE BAKER: Very well. Thank you, Mr.  
7 Beshore.

8 MR. ARMS: I -- I'm raising the question  
9 because Attorney Rosenbaum's questioning was proprietary  
10 or co-op. And I'm just simply asking, is it not true that  
11 in this case -- and there have been changes in its status,  
12 but it's a case of joint ownership by both proprietary and  
13 cooperative interests.

14 JUDGE BAKER: Very well. If the witness knows  
15 and can answer, that is fine because more than one person  
16 may have information and that doesn't preclude testimony  
17 by someone else on the same subject. But I do not know  
18 the extent of this witness's knowledge.

19 MR. ARMS: Okay. We'll go on to a different  
20 question, then. I'm satisfied that we can ask about these  
21 matters with Mr. Gallagher when he takes the stand.

22 JUDGE BAKER: Mr. Beshore indicates you can.  
23 Is that right, Mr. Beshore?

24 MR. BESHORE: That is correct.

1 JUDGE BAKER: Very well. Thank you.

2 BY MR. ARMS:

3 Q With respect to Table Number 46, I'm not --  
4 this involves a listing of the volume bulk milk received  
5 at northeast pool supply plants. Perhaps this question  
6 was raised, but I -- again, for clarification, is my  
7 understanding correct that these -- this volume includes  
8 other source milk that may have been received at these  
9 supply plants either from non-pool sources or other -- or  
10 sources from other orders? Other order plants?

11 A It could include that if that was a form of  
12 diversion or a transfer from another order.

13 Q I'm sorry?

14 A It could include that if it was in the form of  
15 a diversion or a transfer.

16 Q So in fact, at pool supply plants, this could  
17 involve substantial quantities of source -- from sources  
18 other than just co-op 9(c) milk? And it does include co-  
19 op 9(c) milk at these plants too, does it not?

20 A That's correct.

21 Q With respect to page -- the table on page 48,  
22 lagain, this refers to bulk milk, I assume? Milk -- all  
23 sources of milk received as so-called 9(c) cooperative  
24 milk only at the -- at pool supply plants, is that

1 correct?

2 A That's correct.

3 Q This volume, again for purposes of  
4 clarification, may include milk beyond the actual  
5 membership of the 9(c) unit involved, is that correct?

6 A That is correct.

7 Q For example, it may receive -- it may include  
8 9(c) milk -- milk that's in a 9(c) unit that is from  
9 independent producers, not members of a cooperative but  
10 they're inside the unit? And might it include also  
11 smaller cooperatives who are members of the same 9(c)  
12 unit?

13 A That is correct.

14 Q With respect to page -- the table on page 61,  
15 Does this -- is it my understanding this table purports to  
16 show the additional milk that would be pooled under the  
17 Northeast Order were Proposal 9 adopted?

18 A Yes. For -- for the partially regulated  
19 distributing plants. And it would add -- by changing  
20 their regulatory status from partially regulated to fully  
21 regulated, it would essentially add this Class 1 volume to  
22 the pool. If it was Class 1 volume at that plant as  
23 additional volume.

24 Q Could we possibly have a situation, though,

1 where the additional plant might have -- there might be --  
2 a fully regulated producer -- a pool distributing plant  
3 but also have high amounts of manufacturing milk in it?

4 A I'm not sure about high amounts of -- of supply  
5 -- of manufacturing milk but certainly some portion.

6 Q Would you agree with me that the present order  
7 requires a 25 percent qualification rule for producer  
8 distributor plants?

9 A That's correct.

10 Q On page 63?

11 (Pause)

12 BY MR. ARMS:

13 Q Is my understanding correct that this purports  
14 -- this table purports to show the volume of milk that  
15 would be depooled pursuant to the diversion limits that we  
16 propose for -- under Proposal Number 3?

17 A That is correct.

18 Q And is it not true that this volume that you've  
19 used in here includes 9(c) milk diversions?

20 A Yes, that would be correct.

21 Q And within those 9(c) milk categories, is --  
22 might there be large quantities of independent milk as  
23 well?

24 A There could be if that 9(c) unit pooled

1 included -- included non-member producers on their unit --  
2 I'm sorry, as -- as a part of their pooling report.

3 Q This table doesn't intend, does it, to indicate  
4 in any way that actions might be taken by the handlers  
5 involved to find ways that this milk would not be  
6 depooled?

7 A That's absolutely correct.

8 MR. ARMS: Okay. I would like the record to  
9 show that this -- also from my view point, this data  
10 that's been presented has been one of the most outstanding  
11 I have seen in federal order proceedings and that Peter  
12 should -- is commended on my part anyway for the work that  
13 he has put into this, Your Honor.

14 JUDGE BAKER: Very well. Thank you.

15 MR. ARMS: That concludes my questions.

16 JUDGE BAKER: Thank you. I'm sure you  
17 appreciate those comments.

18 THE WITNESS: Thank you, Dave.

19 JUDGE BAKER: Are there any other questions?  
20 Mr. Beshore?

21 CROSS EXAMINATION

22 BY MR. BESHORE:

23 Q One other question, Peter. The table on page  
24 61, would it be possible for you to provide us with a list

1 of the plants that were included in those volumes? It's  
2 more than three plants by virtue of the fact that the  
3 volumes are -- are noted.

4 A Excuse me. It is more than three plants but  
5 revealing the -- given -- given the names, you could --  
6 you could -- we decided not to do that because that would  
7 be revealing. By looking at the changes on a month-to-  
8 month basis, you could back into quite easily volumes by  
9 people who come and go on that list. And for that reason,  
10 you could -- you could determine confidential information  
11 about those -- those plants quite easily.

12 Q Could you do it for the month of March only?  
13 Wouldn't -- wouldn't vary from month to month, we couldn't  
14 back into anything that way.

15 A One selected month?

16 Q Or -- or a list that doesn't identify by  
17 months. All plants that were included in any month but  
18 doesn't identify --

19 A For one selected month you could -- we could do  
20 that.

21 Q Or -- or just a list of -- you know, of all  
22 plants without any indication of which month or months  
23 they included. That would be even more preferable, I  
24 think.

1           A     Okay. That's possible. That's not revealing.

2           Q     Okay. Thank you. I appreciate it.

3           JUDGE BAKER: Are there other questions for Mr.  
4     Fredericks?

5                     (No response)

6           JUDGE BAKER: Let the record reflect that there  
7     are none.

8                     Thank you very much, Mr. Fredericks.

9           THE WITNESS: Thank you.

10          JUDGE BAKER: You've been a most patient  
11     witness.

12          THE WITNESS: Didn't have much choice, did I?

13                     (Laughter)

14                     (Whereupon, the witness was excused.)

15          JUDGE BAKER: Very well. Mr. Stevens?

16                     (Pause)

17          MR. STEVENS: Your Honor, for the record, we  
18     have -- I think we have a dairy farmer witness who is  
19     under some time concerns and wants to be able to leave the  
20     hearing room to leave town at four. He has to be at the  
21     train station at 4:00.

22          JUDGE BAKER: Is he here?

23          MR. STEVENS: I believe he's here now. And we  
24     have two other witnesses with statistical material, but

1 we're certainly willing to -- to accommodate the dairy  
2 farmer or do whatever Your Honor wishes.

3 JUDGE BAKER: Very well. We'll -- we'll be  
4 very glad to accommodate him, then.

5 MR. BESHORE: Yeah, we'd like to hear from him.

6 JUDGE BAKER: All right. Thank you. I don't  
7 know his name or who he is, so I hope he'll step forward.  
8 Whereupon,

9 ERIC OOMS  
10 having been first duly sworn, was called as a witness  
11 herein and was examined and testified as follows:

12 (Pause)

13 JUDGE BAKER: Mr. Stevens, you realize that 5  
14 and 5-A are just identified, they're not admitted into  
15 evidence?

16 MR. STEVENS: Oh, I certainly want to move them  
17 into evidence, Your Honor. I'll be happy to do that when  
18 we get back on.

19 JUDGE BAKER: Very well.

20 THE WITNESS: Hello.

21 JUDGE BAKER: Hello.

22 MR. STEVENS: Your Honor?

23 JUDGE BAKER: Yes?

24 MR. STEVENS: With your gentle prompting, I

1 would like to move into evidence Exhibits 5 and 5-A at  
2 this time, if I could?

3 JUDGE BAKER: All right. What has been marked  
4 for identification as Exhibits 5 and 5-A, the document  
5 from which Mr. Fredericks has testified extensively is  
6 being -- are being moved into evidence. Are there any  
7 questions or objections with respect thereto?

8 (No response)

9 JUDGE BAKER: Hearing none, Exhibits 5 and 5-A  
10 are hereby admitted and received into evidence.

11 (The documents previously  
12 marked for identification as  
13 Exhibits 5 and 5-A were  
14 received in evidence.)

15 MR. STEVENS: Thank you, Your Honor.

16 JUDGE BAKER: You're welcome. The witness has  
17 been sworn.

18 DIRECT TESTIMONY BY MR. OOMS

19 THE WITNESS: Okay. Good afternoon. And I  
20 thank you for the opportunity to submit these comments  
21 regarding Proposals 5, 6, and 7. My name is Eric Ooms and  
22 my family -- my father, two brothers, and I operate a 350-  
23 cow dairy farm in Columbia County, New York. I also serve  
24 as the county president of Columbia County Farm Bureau, am

1 chair of the New York Farm Bureau Young Farmer Committee  
2 as well as on the State Board of Directors and State Dairy  
3 Advisory Committee. I'm here representing New York Farm  
4 Bureau today.

5 New York Farm Bureau is a not-for-profit  
6 32,000-member organization whose primary mission is to  
7 serve and strengthen agriculture. We are a statewide  
8 organization that represents the interests of dairy  
9 farmers, both members and non-members of dairy  
10 cooperatives, based on our grassroots policy development  
11 process.

12 New York Farm Bureau has a member-driven  
13 structure that leads the organization to take positions on  
14 public policy issues. We have a long established dairy  
15 advisory committee comprised of dairy farmer members,  
16 varying herd sizes and geographically dispersed throughout  
17 the state, which has carefully considered the various  
18 proposals that are the topic of this hearing for the  
19 Northeast Order.

20 New York Farm Bureau's Dairy Committee has  
21 decided after deliberation to support the proposals being  
22 forwarded by the Association of Dairy Cooperatives in the  
23 Northeast. New York Farm Bureau supports the Dairy  
24 Committee's representation -- recommendations and would

1 like to offer comments in support of the following  
2 proposals.

3           Proposal Number 5. New York Farm Bureau fully  
4 supports the pool plant revision proposal set forth by the  
5 Association of Dairy Cooperatives of the Northeast, which  
6 would require that pool plants must ship into Order 1  
7 during the months of January through August and December  
8 or in an amount not less than 10 percent of the total  
9 quality -- quantity of milk that is received at the plant  
10 or diverted to it during the month.

11           New York Farm Bureau also supports allowing the  
12 market administrator the flexibility to adjust shipping  
13 percentages if necessary in accordance with the orderly  
14 marketing of milk.

15           Proposal Number 6. New York Farm Bureau  
16 supports the Association of Dairy Cooperatives' proposal  
17 regarding producer milk provisions which, among other  
18 requirements, would establish diversion limits similar to  
19 those in the other orders of not more than 80 percent  
20 diversion during the months of September through November  
21 and 90 percent during the months January through August  
22 and December.

23           Both Proposals 5 and 6 seek to reward those  
24 producers that provide the market with milk when it is

1 needed. The current regulations make it too easy for  
2 handlers physically located in other regions to collect  
3 our orders' higher Class 1 price without the commitment  
4 that is necessary to meet the overall needs of the order.  
5 These two proposals taken together will help ensure the  
6 orderly marketing of milk in all uses and classifications  
7 in the northeast.

8 Just real quickly, my family has a dairy farm  
9 about 10 miles inside New York state. We've been  
10 providing milk for the New England market for about 47  
11 years now, since they put in a bulk tank. And we realize  
12 based on our experience when the order -- when there was  
13 33 orders, we were able to participate in the higher order  
14 but we had a commitment to the order. And basically,  
15 we're asking that, you know, similar -- people with  
16 similar commitments would also be able to take advantage  
17 of the higher Class 1 price. Anyway, I digress.

18 Proposal Number 7. The New York Farm Bureau  
19 fully supports the reestablishment of the marketwide  
20 service payments to provide compensation in the marketwide  
21 pool for the services provided by qualifying entities to  
22 balance the Class 1 market. New York Farm Bureau is  
23 concerned that the costs of balancing the Class 1 market  
24 are currently not equitably shared within the milk

1 marketing system.

2 Order 1 is the largest Class 1 market in the  
3 federal milk order system and cooperatives are unduly  
4 disadvantaged in Order 1 currently -- in Order 1.  
5 Currently, there are so many independent producers.  
6 Eighty percent of independent, non-cooperative milk is  
7 classified as Class 1. Clearly then, the cooperatives are  
8 unfairly shouldering the necessary balancing of the milk  
9 market.

10 Proposal Number 7 would allow qualifying  
11 organizations that are balancing the milk market to  
12 receive six cents per hundredweight on qualified milk  
13 volumes pooled. New York Farm Bureau members and policies  
14 strongly support financially viable cooperatives.  
15 Therefore, we concur with the American -- the Dairy  
16 Cooperatives Group and respectfully request that you --  
17 that the market administrator reestablish marketwide  
18 service payments in Order 1.

19 Thank you for your time and consideration.

20 JUDGE BAKER: Thank you, Mr. Ooms, for your  
21 input and your interest in the hearing. Are there any  
22 questions? Mr. Beshore?

23 CROSS EXAMINATION

24 BY MR. BESHORE:

1           Q     Mr. Ooms, you alluded to the New York Farm  
2 Bureau member-driven structure in your statement and to  
3 the Dairy Advisory Committee. Can you give us a little  
4 more -- just a little more information with respect to who  
5 all was represented in the Dairy Advisory Committee in  
6 terms of herd sizes, geographically --

7           A     Sure.

8           Q     -- dispersed throughout the state, and -- and  
9 marketing affiliation?

10          A     Mm-hmm. We have, I would -- I'm thinking about  
11 between 15 and 20 members who are -- Dairy Advisory  
12 Committee. I know for a fact I'm all the way located in  
13 the very eastern part of the state. Our chairman is Mr. -  
14 - we ship our milk to AgraMark cooperatives. The chairman  
15 of the committee is -- we milk 350 cows.

16                     The chairman is Harry Fifi, who's from northern  
17 New York, I believe Franklin County. He milks about 85 or  
18 90 cows and he ships to the Allied Milk Cooperative.

19                     We have -- on the far western part of the  
20 state, we have a young farmer who's in Cattaraugus County  
21 milking -- just started up and they're milking about 200  
22 cows. And I believe that they are DFA members.

23                     And then the rest are all in between. We have  
24 a couple of 70-cow members and I know there's a member

1 from Delaware County who -- Roger Hamilton who ships to  
2 Greleg Milk Producers in Massachusetts, so he's an  
3 independent.

4 We have definitely a representation of all  
5 shapes and sizes, which is why we have a fairly large  
6 committee, so.

7 Q And the committee took input from all those  
8 sources and varied perspectives and --

9 A The four I mentioned -- the four people I  
10 mentioned were all on the -- in the discussion of whether  
11 or not to support this testimony. There were more, but  
12 that's -- just gives you an idea of the geographic and --  
13 and member representation. But they were all represented  
14 in the discussion as well as in our policy development  
15 process.

16 MR. BESHORE: Thank you.

17 JUDGE BAKER: Thank you, Mr. Beshore. Are  
18 there other questions for Mr. Ooms?

19 (No response)

20 JUDGE BAKER: There appear to be none. Thank  
21 you very much for your --

22 THE WITNESS: Thank you.

23 (Whereupon, the witness was excused.)

24 JUDGE BAKER: We're now back to Mr. Stevens, I

1 believe.

2 MR. STEVENS: Okay. The next witness we would  
3 like to call is Paul Huber.

4 JUDGE BAKER: Very well.

5 Whereupon,

6 PAUL HUBER

7 having been first duly sworn, was called as a witness  
8 herein and was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. STEVENS:

11 Q Mr. Huber, could you state your name for the  
12 record and spell your name, please?

13 A Yes. Paul Huber, H-U-B-E-R.

14 Q And where are you employed, Mr. Huber?

15 A I'm the assistant market administrator for the  
16 Mideast Marketing Area, Federal Order 33. In Cleveland,  
17 based in Cleveland.

18 Q Cleveland, Ohio?

19 A Yes, sir.

20 Q And how long have you been in that position?

21 A I've been the assistant for about a year and a  
22 half. And I've been employed with that order and as  
23 predecessor orders for 28 years.

24 Q All right. What are your duties as the

1 assistant market administrator?

2 A I help oversee the operations of all three  
3 offices. We have an office in Indianapolis and Detroit  
4 plus the one in Cleveland.

5 Q And in your prior employment in the office, I -  
6 - I supposed you've done just about everything that's to  
7 be done in a market administrator's office?

8 A I wouldn't say that, but I was involved in data  
9 processing for several years.

10 Q Did you -- did you prepare certain documents  
11 and bring them with you today?

12 A Yes, I did.

13 Q And at whose request did you prepare the  
14 documents?

15 A I believe it was Charles English.

16 Q All right. You got a request to prepare  
17 documents. You prepared them and brought them with you  
18 today?

19 A Yes.

20 Q I have two documents. The first one -- I'll  
21 ask that they be marked. I'll identify them.

22 The first one I'm looking at is "Producer Milk  
23 by State, 2000 to 2002." And that's a two-page document.  
24 You have a copy of that?

1           A     Yes, I do.

2           Q     I provided one for the judge and for the  
3 reporter, the requisite copies. I believe I would mark --  
4 like this marked -- and there are copies in the back of  
5 the room available for use of the parties.

6           JUDGE BAKER: Exhibit 6.

7           MR. STEVENS: May I have this marked as Exhibit  
8 6, Your Honor? Thank you.

9           JUDGE BAKER: Yes, indeed. Thank you.

10                           (The document referred to was  
11                           marked for identification as  
12                           Exhibit 6.)

13           BY MR. STEVENS:

14           Q     And there's a one-page document entitled,  
15 "Class 1 Route Disposition, Mideast Order 33 Handlers into  
16 Northeast Marketing Area." Do you have a copy of that  
17 with you?

18           A     Yes, I do.

19           Q     Provided one for the judge and -- requisite  
20 copies for the reporter. And there are copies available  
21 in the back of the room. I'd like this marked for  
22 identification as Exhibit 7.

23           JUDGE BAKER: It shall be so marked.

24                           (The document referred to was

1                                   marked for identification as  
2                                   Exhibit 7.)

3                   BY MR. STEVENS:

4           Q     All right.  Let's -- let's begin with -- with  
5     the document -- the two-page document marked for  
6     identification as Exhibit 6.  Could you describe for the  
7     record what's contained in the exhibit?

8           A     Yes.  It's a listing from January 2000 to July  
9     2002, of the sources of producer receipts production by  
10    state in the Mideast marketing area.

11          Q     Okay.  Could you -- and -- and on the left-hand  
12    side are the months and the year, representing the years  
13    2000, 2001, and the partial -- or is it --

14          A     Two -- through July of 2002.

15          Q     July.  And then it has a recitation by the --  
16    by the months.  Am I correct in saying that this is  
17    similar to a document that is contained in Exhibit 5?

18          A     Yes.

19          Q     Why don't you explain -- just take us through  
20    it and explain -- pick a month, a year, and explain one  
21    with probably one -- with more numbers than less.  But  
22    pick one you'd like to describe for the record and tell us  
23    what -- what information is contained in the exhibit?

24          A     Okay.  If you take Iowa, for instance, you see

1 we had receipts from Iowa producers beginning in September  
2 of 2000. The footnotes would indicate that there were  
3 receipts from other states that were restricted due to the  
4 number of producers. We make an attempt to just list them  
5 at -- in an adjoining or a state nearby.

6 I believe Footnote 2 would indicate that there  
7 was some South Dakota milk included.

8 Footnote 3 would indicate some Kansas milk.

9 In the month where, for instance, Kansas, prior  
10 to the footnoted months of July 2001 and August 2001, we  
11 had enough producers that Kansas was not restricted. So  
12 they had their own column beginning in November 2000  
13 running through June of 2001. And you would see even  
14 similar data in some other states.

15 Q So -- so the -- where the zeroes are, that --  
16 that is a zero? That represents no -- no milk? On this  
17 document, if there's a zero --

18 A Yes. In the -- in the case of Kansas, for  
19 instance, it would indicate no milk except in the case  
20 where there were less than three producers or restricted  
21 data, in which case we would have it under another state  
22 as footnoted.

23 Q Okay. And when there's a blank in the -- in  
24 the -- in the form, what does that indicate?

1           A     We -- we do not have that data yet.

2           Q     Now, as it says at the bottom of the first  
3 page, if I'm reading this right, this was prepared by the  
4 Mideast marketing -- market administrator's office,  
5 9/4/02?

6           A     That's correct.

7           Q     Is that correct?  And -- and -- and the  
8 information in this document is subject to the footnotes  
9 on the second page?

10          A     Yes, both pages -- the footnotes are on the  
11 bottom of the second page for both pages.

12          Q     So the -- the footnotes apply to both pages?

13          A     That's correct.

14          Q     And the numbers refer to what -- what footnote  
15 applies where?

16          A     Yes.

17          Q     Now, these were prepared by you or pursuant to  
18 your supervision?

19          A     Yes, they were.

20          Q     And they come from official records of the  
21 market administrator's office or the U.S. Department of  
22 Agriculture?

23          A     Yes, they do.

24          Q     And are they presented -- are they presented in

1 favor or opposed to any proposal here?

2 A No.

3 Q All right. Let me -- let me take you to the  
4 document that's marked for identification as Exhibit 7.  
5 It's a one-page document. What's -- what's the title of  
6 the document?

7 A "Class 1 Route Dispositions, Mideast Order 33  
8 Handlers in the Northeast Marketing Area."

9 Q The note at the bottom says it was prepared by  
10 your office, 9/4/02?

11 A That's correct.

12 Q Why don't you take us through the document and  
13 explain what's contained there?

14 A This would represent Order 33 handlers who had  
15 sales into the Order 1 or the Northeast marketing area.  
16 And this would be the -- the amount of those route sales.

17 Q So, in May of 2002 there were 2,534,443 pounds?

18 A Yes.

19 Q And -- and the document reads that way down by  
20 the years and across with the months?

21 A Actually, down by the months and across by the  
22 years.

23 Q You're -- you're better than I am at up and  
24 down.

1                   And the totals are at the bottom --

2                   A     Yes.

3                   Q     -- for 2000, 2001, and partial 2002?

4                   A     That's correct.

5                   Q     Now, these were prepared by you or pursuant to  
6 your supervision?

7                   A     Yes, sir.

8                   Q     They come from official records of the market  
9 administrator's office of the U.S. Department of  
10 Agriculture?

11                  A     Yes, they do.

12                  Q     And are they presented for or against any of  
13 these proposals?

14                  A     No, sir.

15                  MR. STEVENS: I offer the witness for cross  
16 examination, Your Honor.

17                  JUDGE BAKER: Very well. Are there any  
18 questions? Yes, Mr. English?

19                                CROSS EXAMINATION

20                                BY MR. ENGLISH:

21                  Q     Thank you, Mr. Huber. Just -- just for the  
22 record, my request to you -- to your office included a  
23 request for information about sales of packaged product  
24 from the Northeast Order into Order 33, correct?

1           A     Yes, it did.

2           Q     And that was submitted by Mr. Fredericks as  
3 page 83 in Exhibit 5, correct? You asked -- your office  
4 asked him -- his office to put that evidence in for your  
5 office, correct?

6           A     That's -- that information that we had would  
7 have come from him, so we thought it best that it come  
8 from their office.

9           Q     That's -- I just wanted to complete the -- that  
10 was the scope of the request to my -- from my office to  
11 your office, correct?

12          A     Yes.

13                 MR. ENGLISH: Thank you.

14                 JUDGE BAKER: Thank you, Mr. English. Are  
15 there other questions for Mr. Huber? Yes, Mr. Beshore?

16                         CROSS EXAMINATION

17                         BY MR. BESHORE:

18           Q     Mr. Huber, with respect to Exhibit 6, would you  
19 expect that some of the pooling patterns for milk on Order  
20 33 will change in August with the interim final order  
21 which became effective August 1, 2002?

22           A     I couldn't speculate on that. They're --  
23 they're doing the -- right now and we don't have that  
24 information yet.

1           Q     Okay.  Among -- among other changes that were  
2           made in that interim final order were the elimination of  
3           the so-called free ride period for pooling milk through  
4           the supply plants, is that correct?

5           A     That's correct.

6           Q     Okay.  So that -- whereas during the periods  
7           depicted on Exhibit 6, handlers were free to associate  
8           milk with supply plants during the months of -- corrected  
9           me if I'm wrong here -- January through July in any  
10          amount?

11          A     Yes, it was unlimited.

12          Q     Okay.  So that when you see in perusing the  
13          exhibit large amounts of increased poolings from some  
14          sources during those spring months, that was facilitated  
15          by provisions of Order 33 which are no longer in effect?

16          A     The provisions may -- the provisions have  
17          changed.

18                   MR. BESHORE:  Thank you.

19                   JUDGE BAKER:  Thank you, Mr. Beshore.  Are  
20                   there any other questions?

21                   (No response)

22                   JUDGE BAKER:  There appear to be none.  Thank  
23                   you very much.

24                   Oh, you did -- oh, Mr. Vetne?

## 1 CROSS EXAMINATION

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BY MR. VETNE:

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Q John Vetne, attorney for Friendship. You indicated that you're -- you're doing the August pool now. You have received, however, handler reports already for the August pool?

A That's correct.

Q And have you noticed that some plants that filed a report as handlers for July and earlier months did not file a report for August because they went off the pool?

A I have not been in the office. They're doing pool right now. I don't know what reports have been filed.

Q Okay. You're -- you're not aware, for example, that Stockton Cheese Plant in Illinois didn't file a report as a pool supply plant for the month of August?

A I don't believe they have, but I've not been back at the office.

Q Are you aware of when -- when the Stockton Cheese Plant became a pool plant in Order 33?

A I believe it was -- I think it would be late summer, I think, of 2000. I could be off a month or two.

Q Do you have Exhibit 6 in front of you? Can you

1 look at the Illinois stating listings and -- and maybe  
2 make a better educated guess as to what -- what their  
3 first month was?

4 (Pause)

5 BY MR. VETNE:

6 A The numbers speak for themselves.

7 Q I'd agree. Thank you.

8 JUDGE BAKER: Very well. Are there any other  
9 questions?

10 (No response)

11 JUDGE BAKER: There appear to be none. Thank  
12 you very much.

13 (Whereupon, the witness was excused.)

14 MR. STEVENS: Your Honor?

15 JUDGE BAKER: Yes?

16 MR. STEVENS: I'd move that the documents  
17 marked for identification as Exhibits 6 and 7 be entered  
18 into evidence.

19 JUDGE BAKER: Very well. Are there any  
20 questions or objections with respect to the admission into  
21 evidence of what have been marked as Exhibit 6 and 7?

22 (No response)

23 JUDGE BAKER: Hearing none, Exhibits 6 and 7  
24 are hereby admitted and received into evidence.

1 (The documents previously  
2 marked for identification as  
3 Exhibits 6 and 7 were received  
4 in evidence.)

5 MR. STEVENS: Your Honor, I'd like to call to  
6 the stand Ms. Ely?

7 JUDGE BAKER: Very well. Ms. Ely, please?

8 (Pause)

9 Whereupon,

10 GAYLE ELY

11 having been first duly sworn, was called as a witness  
12 herein and was examined and testified as follows:

13 JUDGE BAKER: Thank you.

14 (Pause)

15 DIRECT EXAMINATION

16 BY MR. STEVENS:

17 Q Ms. Ely, could you state your name and spell  
18 your name for the record, please?

19 A Gayle, G-A-Y-L-E, Ely, E-L-Y.

20 Q By whom are you employed?

21 A By the market administrator office for the  
22 Southeast and Florida marketing areas, Order 6 and 7.

23 Q And what is your position in that office?

24 A Assistant market administrator.

1 Q Could you tell us what your duties are?

2 A My duties are to oversee the various functions  
3 of the market administrator office, particularly  
4 administrative, information technology, and market  
5 information.

6 Q And starting today, one of your duties is to  
7 present testimony in a federal milk order hearing, isn't  
8 it?

9 A Mm-hmm, mm-hmm.

10 Q Welcome. Did you -- did you prepare certain  
11 documents that you brought with you today?

12 A Yes. Under my supervision, yes.

13 Q Okay. At whose request were those documents  
14 prepared?

15 A Charles English.

16 Q And you brought them with you today?

17 MR. STEVENS: Your Honor, I guess I'd like  
18 marked for identification a document. It consists of two  
19 exhibits and a cover sheet which I'm happy -- I -- it  
20 would be fine if the witness read it into the record. It  
21 explains the background for the testimony for the  
22 exhibits. And -- and the exhibits, there is one exhibit  
23 which I think goes from page two through page 42 and that  
24 is one -- that is one document with that many pages. And

1 then the -- then the last page --

2 JUDGE BAKER: -- page 43 -- oh, 43 --

3 MR. STEVENS: No, then the last page is a  
4 separate -- I don't want to call it "exhibits" unless  
5 we're going to mark them as exhibits. So I think it  
6 probably would be fine if we just marked the whole thing,  
7 if it's agreeable with the -- with the group if we mark it  
8 as one exhibit, which would be Number 8.

9 JUDGE BAKER: Eight.

10 MR. STEVENS: And it has -- it has three parts  
11 which we will explain.

12 JUDGE BAKER: Very well. What you have handed  
13 me and described shall be marked for identification as  
14 Exhibit 8. And the various parts will be explained as we  
15 go along then, Mr. Stevens. Thank you.

16 (The document referred to was  
17 marked for identification as  
18 Exhibit 8.)

19 BY MR. STEVENS:

20 Q Okay. With that, would you -- would you -- do  
21 you have a copy of the exhibit with you?

22 A Yes.

23 Q Why don't you go through the first page there  
24 and -- and please read that -- those paragraphs into the

1 record? And then we'll continue from there.

2 Q Okay. "The accompanying exhibit is entered  
3 into testimony in the Federal Milk Marketing Order 1  
4 hearing in Alexandria, Virginia, on September 10th, 2002,  
5 at the request of Charles English. The exhibit consists  
6 of copies of the Federal Milk Marketing Order 7, Public  
7 Producer Milk by County Slash State report for the months  
8 of March and August 2000, March and August 2001, and March  
9 2002, and data pertaining to Class 1 route sales into  
10 Federal Orders 6 and 7 since January 2000 that originated  
11 from plants located in Federal Order 1 for months in which  
12 such data is not restricted for confidentiality reasons.

13 "The Public Producer Milk By County Slash State  
14 report lists total pounds of producer milk pooled on  
15 Federal Order 7 by state and county of origin for all  
16 counties in which there are three or more producers, The  
17 release of similar data for Federal Order 6 is restricted  
18 for confidentiality reasons due to the fact that fewer  
19 than three handlers account for the total volume of milk  
20 marketed on that order.

21 "Data related to Class 1 route sales in Federal  
22 Orders 6 and 7 by plants regulated on Federal Order 1 is  
23 presented for those months since January 2002 in which  
24 three or more Federal Order 1 plants supplied product to

1 those markets. Similar data regarding Class 1 route sales  
2 into Federal Order 1 by plants located in Federal Orders 6  
3 and 7 for all months since January 2002 is restricted due  
4 to the presence of less than three handlers selling  
5 product into Federal Order 1."

6 Q Thank you. Now -- and you've described it very  
7 well. I must say, I'm out of questions, although lawyers  
8 are never out of questions. So -- one is. In terms of  
9 the public producer milk by county and state, pages two  
10 through 42, that's as you described it. In other words,  
11 it's -- it's information on the total pounds of producer  
12 milk pooled on Federal Order 7 by state and county of  
13 origin?

14 A That's correct.

15 Q And as -- and as you then further stated --

16 A That's correct.

17 Q -- in your statement? And -- and 43 -- well,  
18 let's -- let's look at that for a minute. It -- just go  
19 through -- pick a state and just go through one -- one of  
20 the columns there. Tell us what information is there that  
21 --

22 A What page are you --

23 Q -- you've already told us?

24 A -- what page are you on?

1 Q Start on page two, if you will.

2 A On page two, okay.

3 Q Pick a county in Alabama and just -- just read  
4 across --

5 A Okay.

6 Q -- and tell us what --

7 A Okay.

8 Q -- what's represented there?

9 A This is data from March 2002 and for all milk  
10 producer --

11 Q You're talking about page two now, right?

12 A Yes.

13 Q March 2000?

14 A 2000, I'm sorry. March 2000.

15 Q Okay.

16 A Starting with the state of Alabama and then  
17 reading across, you have a county name. For instance,  
18 Baldwin.

19 The next column is -- should have a heading,  
20 "Code." It's not exactly lined up. And that simply a  
21 FIPS code for that county. It's a geographic locator  
22 code.

23 The third column is number of farms, and that  
24 heading should be moved over.

1           And the fourth column is the total pounds of  
2 milk that originated from that county in Alabama.

3           Q     And that -- and that follows -- that pattern  
4 follows for all the states and the counties that are  
5 represented in those pages?

6           A     That's correct.

7           Q     And you did say something about that -- that if  
8 the information is restricted, that is if there's less  
9 than three handlers, you -- you do not report the  
10 information?

11          A     If there are less than three producers in a  
12 county, we do not report that information. If there are  
13 less than three handlers in the state, we do not report  
14 that information.

15          Q     Okay. Now, on the -- on the last page, page  
16 43, the one -- document entitled, "Class 1 Route Sales  
17 into Federal Order 6 from Federal Order 1," again, why  
18 don't you just take one of those horizontal columns and  
19 describe the information that's contained there?

20          A     This is, "Class 1 Route Sales into Federal  
21 Order 6, the Florida Marketing Area, from Federal Order  
22 1." Reading across you have it regulated by federal  
23 order. So you see a "one" in -- in all of those rows.

24                   Class 1 sales are into Order 6, so those are

1 all the same for all the rows.

2 The third column is the year and the month. So  
3 the first one would be August of 2000.

4 Q Okay.

5 A The number of plants that were selling into  
6 Order 6 in that month were three and the total pounds is  
7 listed under "Product Pounds."

8 Q And the same information in the second group  
9 there is reported for Class 1 route sales into Federal  
10 Order 7 --

11 A That's correct.

12 Q -- from Federal Order 1?

13 A That's correct.

14 Q And -- and the same description would apply to  
15 the columns that are contained in that part of the page?

16 A That's correct.

17 MR. STEVENS: I submit the witness for cross  
18 examination, Your Honor.

19 JUDGE BAKER: Very well. Are there any  
20 questions? Yes, Mr. English?

21 CROSS EXAMINATION

22 BY MR. ENGLISH:

23 Q Again, let me thank you for putting this  
24 together.

1           When you sent this data -- when your office  
2 sent this data to me originally, they sent every month,  
3 correct?

4           A     That's correct.

5           Q     And -- and for your purposes or your --  
6 purposes, I -- I chose the representative month, correct?

7           A     That's correct.

8           Q     And have I since had a discussion with you that  
9 in order to match up with some representative months up  
10 here that I might want some different months?

11          A     That's correct.

12          Q     If I were to show you, and maybe I'll ask Mr.  
13 Stevens. But if I were to show you the data for June and  
14 October of 2000, June and October of 2001, and June of  
15 2002, and if I were to then provide additional copies for  
16 the record, could you at least confirm that this is the  
17 data you sent me for those months?

18          A     Yes.

19                   (Pause)

20           MR. ENGLISH: For the record, this is the  
21 producer data that appears on pages two through 42 of what  
22 is marked as Exhibit 8. And it's 40 pages of material for  
23 June and October of 2000, June and October of 2001, and  
24 June of 2000 -- 2002.



1 office provided me?

2 A Yes, it is.

3 MR. ENGLISH: Your Honor, could I then, subject  
4 to maybe showing to Mr. Stevens and -- and obviously  
5 making representation that the copies I make will be  
6 accurate and complete, can I go ahead and -- and do that  
7 and have Exhibit 9 submitted based upon that?

8 JUDGE BAKER: Very well. You're moving it into  
9 evidence?

10 MR. ENGLISH: I will so move and I guess once  
11 everybody has a chance to see it -- I mean, I think -- I  
12 think she's established the foundation today and then once  
13 I can provide copies for the record, I will make that  
14 motion I think to be fair to let everybody see it at that  
15 time.

16 JUDGE BAKER: We'll defer that until you so  
17 move it, then, Mr. English.

18 MR. ENGLISH: Thank you, Your Honor.

19 JUDGE BAKER: You're welcome. Are there other  
20 questions for Ms. Ely?

21 MR. BESHORE: I have, Your Honor.

22 JUDGE BAKER: You have one. All right. Mr.  
23 English.

24 (Pause)

1 JUDGE BAKER: Mr. Beshore? Mr. English has  
2 one, I think, but --

3 MR. ENGLISH: No, I'm done.

4 JUDGE BAKER: Oh, you don't have one? I'm  
5 sorry. Mr. Beshore?

6 CROSS EXAMINATION

7 BY MR. BESHORE:

8 Q Ms. Ely, does your office publish the producer  
9 county source data each month?

10 A No.

11 Q Okay. I'm not quite sure I kept up with what  
12 months we now have or are -- will likely have in the  
13 record. But what months do you -- do you publish -- do  
14 you --

15 A We publish --

16 Q -- routinely compile the data?

17 A We -- we publish total data each month. In  
18 other words, total number of producers but not by state  
19 and county. We do that, I believe, in May and December.

20 Q In May and December you routinely do?

21 A Yes.

22 Q Okay. Has -- have the May and December -- has  
23 that information been -- is that among the information  
24 that has been -- you've been asked to provide here?

1 A No.

2 Q Okay.

3 A No, I was asked for specific months.

4 Q March and October?

5 A Yes.

6 Q March --

7 A Actually, originally, the request was for  
8 representative months, but that was not specific. So we  
9 were -- we gave all of the months since 2000 that was not  
10 restricted.

11 Q Okay. And is that what you have now been asked  
12 to identify for producer --

13 A No, I was asked to identify representative  
14 months of June and October.

15 Q Okay. In addition to --

16 A For 2000 --

17 Q -- in addition to the March and August --

18 A Yes.

19 Q -- information? So we're now going to have  
20 March, June, August, and October?

21 A That's correct.

22 Q Okay. During -- I just have two questions. In  
23 order to be pooled on -- on Order 6, a producer's got to  
24 deliver, what, 60 percent, 70 percent, 80 percent of the

- 1 production to a -- pool plant?
- 2 A A producer?
- 3 Q Yes.
- 4 A Ten days.
- 5 Q Year round?
- 6 A Yes.
- 7 Q On Order?
- 8 A Order 6.
- 9 Q And that's uniform year round?
- 10 A That's correct.
- 11 Q Okay. Is it -- what is it in Order 7?
- 12 A It's four days in the long months and 10 days  
13 in the short months. And I don't have in front of me what  
14 months those are exactly, but it's four and 10.
- 15 Q And are the diversion limitations the  
16 reciprocal of those delivery requirements, essentially?
- 17 A Yes.
- 18 Q Do both Orders 6 and 7 have transportation  
19 credits by which the pool provides payments to producers  
20 for the service of supplying milk to the market?
- 21 A No. Only Order 7.
- 22 Q Only Order 7. Okay. Are those payments  
23 applicable throughout the year or only in certain months?
- 24 A Only July through December.

1 MR. BESHORE: Okay. Thank you.

2 JUDGE BAKER: Thank you. Are there any other  
3 questions for Ms. Ely? Mr. Vetne?

4 CROSS EXAMINATION

5 BY MR. VETNE:

6 Q John Vetne. In response to the question by  
7 Mark Beshore, you said Order 7 provides for payments to  
8 producers for marketwide services, is that correct?  
9 Producers get paid?

10 A Transportation credits are provided to those  
11 who bring supplemental milk in.

12 Q And that goes to dairy farmers or to handlers?

13 A It goes to handlers.

14 Q Not -- not to producers?

15 A I'm sorry. No, not to producers. To handlers.

16 MR. VETNE: Thank you.

17 JUDGE BAKER: Very well. Are there any other  
18 questions? Mr. Stevens?

19 REDIRECT EXAMINATION

20 BY MR. STEVENS:

21 Q I just want to make sure. I -- I did ask you  
22 the -- if you prepared these documents?

23 A Yes, under my supervision.

24 Q Did I ask you that question?

1           A     They were prepared under my supervision.

2           Q     And -- and from records of the -- of your  
3 office or the Department of Agriculture?

4           A     Yes.

5           Q     And they're not presented for or against any  
6 proposal, are they?

7           A     No, they're not.

8           MR. STEVENS: That's all I have, Your Honor.

9           JUDGE BAKER: Very well. Thank you. Are there  
10 any other questions for Ms. Ely?

11           (No response)

12           JUDGE BAKER: There are none. Thank you very  
13 much.

14           (Whereupon, the witness was excused.)

15           MR. STEVENS: May I ask that Exhibit 8 be moved  
16 into evidence?

17           JUDGE BAKER: Exhibit 8 has been moved into  
18 evidence. Are there any questions or objections with  
19 respect thereto?

20           (No response)

21           JUDGE BAKER: Let the record reflect that there  
22 is no response. Exhibit 8 is admitted and received into  
23 evidence.

24

1 (The document previously  
2 marked for identification as  
3 Exhibit 8 was received in  
4 evidence.)

5 JUDGE BAKER: Mr. Stevens, does that complete  
6 the government's presentation?

7 MR. STEVENS: Your Honor, I believe it does at  
8 this time. I would reserve the right to -- there may be a  
9 need further into the hearing to present some more  
10 statistics. I'd just like to reserve that right. Other  
11 than that, we are finished.

12 JUDGE BAKER: Very well. Thank you. Mr.  
13 English?

14 MR. ENGLISH: The government is aware and I  
15 mentioned this to at least one other participant. Your  
16 Honor, the same -- the request I made that -- that Mr.  
17 Huber and Ms. Ely just presented testimony on was also  
18 made to the Order 5 market administrator, the Appalachian  
19 Order. I'm not sure through my miscommunication or what,  
20 I -- I have received the data but apparently no one from  
21 that office has appeared to put that evidence into the  
22 record. And it's my understanding that they're not  
23 planning on actually appearing.

24 It is the identical kind of data prepared, to

1 my knowledge, in the same fashion as the other data, and  
2 perhaps another witness from USDA could put it in after  
3 whatever discussions.

4           Again, I -- I have the material. I don't have  
5 it physically with me today. I was expecting someone to  
6 show up with the material. And if somebody wants other  
7 months other than March, June, August, and October, I'd be  
8 perfectly prepared to add them because I have all the  
9 months. It's just a question of how big the document will  
10 be.

11           But I guess, with the parties' indulgence, it's  
12 the same kind of data, it's the kind of data that is  
13 published although not necessarily for these particular  
14 months. And with no objection or whatever -- how  
15 everybody wants to handle it, I'd like to handle it in the  
16 most expeditious way to -- to get that material into the  
17 record so that we have as complete a picture as possible  
18 of where milk, you know, may be sourced from and going to  
19 for -- for the various orders that are or around Order 1.

20           I'm not sure if Mr. Beshore has an objection or  
21 not. I mentioned it to him a moment ago. It's data more  
22 than anything else. And -- and hopefully, someone from  
23 the USDA could put it in.

24           JUDGE BAKER: Have you talked to Mr. Stevens

1 about it?

2 MR. ENGLISH: Yes. When I -- when he kept  
3 saying that he only had two more witnesses, I kept saying,  
4 no, you have three. That's -- that's when I started  
5 talking to him about it.

6 JUDGE BAKER: Mr. Stevens, is there any  
7 possibility you all can get together on this?

8 MR. STEVENS: I -- I think there is. I don't  
9 know what the feeling of the parties is in terms of the  
10 introduction of the -- of the -- of the material. You  
11 know, if the material were in my possession and there was  
12 some objection of the -- of the -- of the parties here to  
13 its admission, I'd certainly ask that it be made an offer  
14 of proof and be -- and be -- and be admitted in that -- in  
15 that way and let the department sort it out during the  
16 course of the rulemaking.

17 JUDGE BAKER: Mr. English, that is a --

18 MR. ENGLISH: Let -- let me hear from Mr.  
19 Beshore. I think if there's somebody who has an  
20 objection, it might be he. I don't know.

21 MR. BESHORE: Well, yeah. I'm not sure  
22 exactly what the data is. I haven't seen it.

23 There are -- there are sort of two categories  
24 of data that comes into these hearings from the market

1 administrator's office. One is material routinely  
2 prepared and regularly published data which everyone  
3 understands and knows about and has seen and regularly  
4 sees. Others is -- the other category is custom-prepared  
5 data at the request of hearing participants which is put  
6 together for purposes of this hearing.

7 And I think it is at the least helpful and  
8 quite possibly essential to have a witness to explain the  
9 preparation of the customized for the purpose of this  
10 hearing data, not to question its integrity or  
11 authenticity or anything like that, but to understand it.  
12 And I don't know whether -- which category the information  
13 that Mr. English is referencing falls into, frankly.

14 MR. ENGLISH: Well, again, Mr. Beshore, I've --  
15 I've described it as -- as specifically as I can. It is  
16 identical in form to the data just presented by Ms. Ely  
17 for Exhibit 7. It's the producer milk by state and  
18 county. I volunteered to produce other -- other months if  
19 you prefer other months. But I was going to propose to  
20 put in March and June and August and October. And that is  
21 routinely collected data and it apparently is routinely  
22 available data as long as it's not confidential.

23 I acknowledge it is not necessarily the months  
24 that are deemed to be representative, but if you want a

1 different month, I'm perfectly happy to add to it. And  
2 then it is the same kind of data that is page 43 or 43,  
3 which is the sales by plants in Federal Order 1 into  
4 Federal Order 5. And I guess that data may very well  
5 already be in the record in some form.

6 I'm not really sure if I need that because I  
7 think, frankly, Exhibit 5 has that. So we can simplify  
8 this right now and I will cut that out. And that's -- if  
9 that specially prepared because I think that's covered in  
10 Exhibit 5, page 83.

11 So what I'm looking at right now is the kind of  
12 data that is producer milk by state and county which is  
13 now in the record for Order 1, in the record for Order 33,  
14 in the record for Order 7, not in the record for Order 6  
15 because it's confidential. And so therefore, just to  
16 complete the picture, I wanted it for -- for this order.

17 And I, frankly, think it's almost in the nature  
18 officially noticeable material. So I'm not sure there's,  
19 you know, really great grounds about here.

20 And I will -- if you want me to, Mr. Beshore,  
21 I'll give you the whole document as I received it in PDF  
22 form on my computer. So I'll do whatever, you know, can  
23 be done there.

24 JUDGE BAKER: Well, is there anyone else who

1 wishes to be heard on this? Mr. Vetne?

2 MR. VETNE: I don't have a burning desire to be  
3 heard on -- on this particular data set. But I'm -- but  
4 I'm concerned that all the angst concerning this data set  
5 -- I think statistical material such as this that is  
6 published by a market administrator needs only be  
7 authenticated. I don't think you need to sponsor a  
8 witness to -- to explain it. Most of us understand this  
9 stuff. Sometimes we don't. But then it's a question of,  
10 wait, I think it ought to be -- if it's available, it  
11 ought to be marked, it ought to be received as is data  
12 that I will be requesting later either by official notice  
13 or -- or by actual documents.

14 JUDGE BAKER: Very well. Mr. English, at the -  
15 - oh, excuse me. At the very least, you could make an  
16 offer of proof of it in the absence of Mr. Stevens  
17 agreeing to its authenticity.

18 MR. ENGLISH: I'm -- I'm actually hoping that I  
19 can deal with the authenticity, Your Honor. I certainly  
20 hope that we can get over that. And I -- I obviously want  
21 to notify the participants I didn't know of this a half  
22 hour ago, an hour ago. I now know of it and I will do my  
23 best to -- to correct it.

24 I think the one thing I'm unable to do,

1       apparently, under the circumstances for this particular  
2       week is have somebody from that office here. Now, you  
3       know, maybe I can get the data at the Dairy Division and  
4       have Dairy Division put it in in some way. And -- and all  
5       I can do is move on that school.

6               Obviously, I'm going to ask for a minimum of  
7       offer of proof. But I think it's really very, very  
8       important for -- for this record. And I guess I can't  
9       really foresee why it is that this data, which legally had  
10      almost no questions asked of it in terms of Orders 33 and  
11      6 and 7, would not be admissible for Order 5.

12             JUDGE BAKER: Well, if you describe it, Mr.  
13      English, it does seem to refer to data which would be  
14      helpful to the secretary in formulating the decision in  
15      this matter. At the very minimum, it can be the subject  
16      of an offer of proof.

17             Now, does that bring us to the consideration of  
18      Proposal Number 7? I think that it does.

19             Am I correct that that was submitted by the  
20      Association of Dairy Cooperatives in the Northeast for  
21      Proposal 7?

22             MR. BESHORE: Yes, it was.

23             JUDGE BAKER: Very well. And the proponents  
24      are going to go forth?

1                   MR. BESHORE: We are -- we are prepared to  
2 proceed.

3                   JUDGE BAKER: Very well. If you would do so,  
4 Mr. Beshore?

5                   MR. BESHORE: Okay. If -- if I may, I would  
6 like to just note for everyone's information, at the  
7 beginning of our presentation here that we will have five  
8 witness presentations by four witnesses in support of  
9 Proposal 7. And we will begin with Mr. Ed Gallagher from  
10 Dairy League Cooperative, who will present an introduction  
11 -- an introductory overview of the market and its  
12 characteristics.

13                   After Mr. Gallagher, we will call Dr. Charles  
14 Ling of the USDA Rural Business Cooperative Service to  
15 present and discuss the study that he has published with  
16 respect to the costs of balancing milk in the northeast  
17 market.

18                   After Dr. Ling, Bob Wellington from AgraMark  
19 will testify with respect to all of the policy issues  
20 relating to the proposal and the -- and the details of the  
21 proposal and how it works as well as provide information  
22 with respect to AgraMark Cooperative's balancing services  
23 in them northeast and its own operations and costs.

24                   After Bob Wellington, Dennis Shad from Land O'

1 Lakes will testify, presenting information with respect to  
2 Land O' Lakes' operations in Order 1, its balancing  
3 operations, its costs, and also aggregate information from  
4 the association members with respect to the daily  
5 fluctuations in deliveries that they provide to Class 1  
6 distributing plants in Order 1.

7 Finally, Mr. Gallagher will -- will testify  
8 again with respect to the operations of Dairy League, DFA,  
9 and DMS in the northeast, their balancing services with  
10 respect to the operations of -- of the -- all of the seven  
11 balancing plants that were -- data from which was already  
12 presented by Mr. Fredericks, and with respect to some  
13 other -- other issues with -- concerning Proposal 7.

14 So that's our presentation from beginning to  
15 end. I offer that so that we know what's -- everyone  
16 knows what's coming and we can shape the presentation, you  
17 know, in that manner.

18 JUDGE BAKER: Very well. Thank you for your  
19 explanation. And I think everyone looks pleased, so we  
20 may as well progress. And you can call Mr. Gallagher.

21 MR. BESHORE: Okay. Would you take the stand,  
22 Mr. Gallagher? Have you been sworn?

23 With Mr. Gallagher, there's a written statement  
24 and a set of exhibits which are available.

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Whereupon,

EDWARD GALLAGHER

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

MR. BESHORE: Your Honor?

JUDGE BAKER: Yes?

MR. BESHORE: Do you have copies of the --

JUDGE BAKER: Yes, I do. Thank you.

MR. BESHORE: Thank you. Before Mr. Gallagher proceeds, I would like to ask that the written testimony of Edward Gallagher be marked for identification as proposed Exhibit --

JUDGE BAKER: Ten.

MR. BESHORE: -- Ten and that the exhibits of Mr. Gallagher which are separately -- separately compiled be marked for identification as proposed Exhibit 11.

JUDGE BAKER: They shall be so marked.

(The documents referred to were marked for identification as Exhibits 10 and 11.)

JUDGE BAKER: And the witness has been sworn.

MR. BESHORE: Thank you. Thank you, Your Honor.

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DIRECT EXAMINATION

BY MR. BESHORE:

Q Mr. Gallagher, would you please state your -- your name and your business address, please?

A My name is Edward Gallagher. My business address is 5001 Britton Field Parkway, Syracuse, New York, 13221.

Q Okay. Now, before we go into your -- your testimony and you describe your present employment affiliation, could you please tell us your educational background and some of the professional experience you have had in -- in your chosen field of endeavor to date?

A Sure. I grew up on a dairy farm in central New York. The farm is still in the operation of my family. My brother and his family operates it.

I went to school at Cornell University. Graduated with a degree in farm business management and agricultural economics. While I was a senior at Cornell, I began work at the former New York-New Jersey Federal Milk Market Administrator's Office, where I worked for 12 years through a variety of positions including cooperative relations specialist, agricultural economist, and chief of research.

While at DMA's office, I attended graduate

1 school at the Ohio State University, getting a degree -  
2 - a Masters degree in agricultural economics.

3 In 1996 I was hired by Dairy League Cooperative  
4 and have been employed by them to date. My current  
5 position is their vice president of planning and  
6 regulatory policy.

7 Q And perhaps you indicated this, but your  
8 degrees are from what institutions in what field?

9 A A Bachelors from Cornell in farm business  
10 management and agricultural economics and a Masters from  
11 the Ohio State University with a degree in agricultural  
12 economics.

13 MR. BESHORE: Before Mr. Gallagher proceeds  
14 with his testimony, I would like to offer him as an expert  
15 in the fields of agricultural economics and dairy  
16 marketing and offer him for voir dire with respect to  
17 those fields.

18 JUDGE BAKER: Are there any questions or  
19 objections with respect to this request to Mr. Beshore?

20 (No response)

21 JUDGE BAKER: Apparently, there are none. No  
22 request has been made for voir dire. Your request is  
23 granted, Mr. Beshore.

24 MR. BESHORE: Thank you.

1 BY MR. BESHORE:

2 Q Now, Mr. Gallagher, before proceed with your  
3 written testimony which refers to your set of exhibits,  
4 could you just identify briefly for us the -- the  
5 documents that are compiled in Proposed Exhibit 11?

6 A Certainly.

7 Q Thank you.

8 A I've got two -- one -- one set of exhibits that  
9 are basically made up of two groups, figures, and tables.  
10 And I've listed the figures consecutively and then the  
11 tables consecutively. The first figure is data -- is --  
12 is a comparison of the three mega milk regions in the  
13 United States: California, the upper Midwest, and the  
14 Northeast. And it compares their square mileage of land  
15 mass, the total amount of milk produced in those states,  
16 and a simple calculation to determine production  
17 concentration that I am calling pounds per square mile.

18 The data for milk production came from mass  
19 data and the square mileage information came off of an  
20 encyclopedia Internet site. I'm not quite sure which one,  
21 but if you don't like the numbers you can find your own  
22 Internet site and recalculate.

23 The Figure 2 is a -- a map that was put  
24 together by the New York State Department of Agricultural

1 Markets that I borrowed from them, and I believe it  
2 appeared a few months ago in the "Choose Reporter." And  
3 it is just an -- identification of the mega milk regions  
4 in the United States.

5 Figure 3 is a map of the federal milk marketing  
6 order system to date. And I downloaded that off of the  
7 Dairy Division Web site.

8 Figure 4 is data that I put together based on  
9 Federal Order Number 1 data that shows the average daily  
10 deliveries to Class 1 for the order for two years.

11 Figure 5 is similar data but for Class 3 and  
12 Class 4 combined.

13 And Figure 6 just shows one year of  
14 information, daily deliveries of Class 1 compared to daily  
15 deliveries to Class 3 and Class 4. Again, that's all data  
16 that I borrowed from the MA's office and published -- that  
17 was published in their annual statistics.

18 On the tables, Table 1 just ranks the federal  
19 orders by their in-area population. And the data source  
20 is the "Federal Order Market Statistics 2001 Annual  
21 Summary."

22 Table 2, same data source, ranks the federal  
23 orders by producer receipts pooled in Class 1.

24 Table 3, same data source, ranks the orders by

1 producer receipts pooled as Class 2.

2 Table 4, same data source, ranks the orders by  
3 milk, skim and cream, used to produce fluid cream under  
4 federal orders.

5 Table 5, same data source, ranks producer  
6 receipts pooled as Class 3.

7 Table 6, same data source, ranks producer  
8 receipts pooled as Class 4.

9 Table 7 is a table out of -- that I copied out  
10 of the "Federal Order Market Statistics 2001 Annual  
11 Summary." It's page 17.

12 And Table 8 is a table that I put together with  
13 the help of some of my colleagues. It just identifies  
14 selected proprietary plants that have their own producer  
15 supplies and operate in the northeast milk shed.

16 Q Thank you. Would you then proceed with your  
17 testimony, Mr. Gallagher, with respect to Proposal 7?

18 A Hello. My name is Edward Gallagher. I appear  
19 here today on behalf of the Association of Dairy  
20 Cooperatives of the Northeast, known as ADCNE. Our  
21 members are AgraMark, Inc.; Land O' Lakes, Inc.; Maryland  
22 and Virginia Milk Producers Cooperative Association, Inc.;  
23 St. Albans Cooperative Creamery, Inc.; Upstate Farms  
24 Cooperative, Inc.; Dairy Farmers of America, Inc.; Oatka

1 Cooperative, Inc.; and Dairy League Cooperative Inc. No  
2 comma in Dairy League Cooperative Inc.

3 Collectively, ADCNE members represent more than  
4 65 percent of the producers pooled under the Northeast  
5 Order. On behalf of ADCNE, I want to thank USDA's Dairy  
6 Division for honoring our request, convening this hearing,  
7 and listening to our testimony that will present what I  
8 think is undisputed evidence of disorderly marketing  
9 conditions on the Northeast Order and the need to take  
10 quick, concise, and immediate emergency action to resolve  
11 these conditions.

12 As I stated earlier, I am the vice president of  
13 planning and regulatory policy for Dairy League  
14 Cooperative. During this hearing I am representing Dairy  
15 League, Dairy Marketing Services, and the Northeast Area  
16 Council of Dairy Farmers of America. My business address  
17 is 5001 Britton Field Parkway, Syracuse, New York, 13221.

18 Dairy Marketing Services is a milk marketing  
19 and membership joint venture between Dairy League and  
20 Dairy Farmers of America. This business venture markets  
21 all of the milk produces by Dairy League and the Northeast  
22 Area Council of Dairy Farmers of America. Although a  
23 Dairy League employee, I act in a consulting basis with  
24 both Dairy Marketing Services and the Northeast Council of

1 Dairy Farmers of America and am involved in their day-to-  
2 day business operations.

3 Dairy League Cooperative represents 2400 dairy  
4 farmers, most of whom are pool producers under the  
5 Northeast Order. The Northeast Area Council of Dairy  
6 Farmers of America represents 2200 dairy farmers with most  
7 being pool producers under the Northeast Order.

8 Dairy Marketing Services is the pool handler  
9 for Dairy League and the Northeast Council of Dairy  
10 Farmers of America. And Dairy League and Dairy Farmers of  
11 America are members of the Association of Dairy  
12 Cooperatives of the Northeast, as I mentioned earlier.

13 The makeup of the Northeast milk market is  
14 unique. The Northeast Federal Order was created in the  
15 merger of the New England, New York-New Jersey, and Middle  
16 Atlantic Federal Orders during the federal order reform  
17 process. There's a number of characteristics that make it  
18 unique among federal orders.

19 The Northeast is the densest mega milk region.  
20 Its milk shed includes most of the states of New York and  
21 Pennsylvania, the third- and fourth-largest milk-producing  
22 states in the United States. But it also includes the  
23 states of Vermont -- excuse me, the state of Vermont, the  
24 13th largest milk-producing state. The combined -- area

1 and milk production of the -- contiguous states of New  
2 York, Pennsylvania, and Vermont does not equal the size of  
3 the two other mega milk-producing regions in the United  
4 States, that of California and the upper midwest states of  
5 Wisconsin and Minnesota. And you can see that on Exhibit  
6 11, Figure 1.

7 And a footnote that reads in 2001 the states of  
8 New York, Pennsylvania, Vermont, Minnesota, Wisconsin, and  
9 California produced 89.6 billion pounds of milk. This  
10 represents 54 percent of the milk produced in the United  
11 States. These three mega milk-producing regions are  
12 expected to garner a larger share of the U.S. milk market  
13 through this decade. And I say, see the map depicting the  
14 mega milk regions that is Exhibit 11, Figure 2.

15 Back to the main part of the testimony.  
16 However, on a milk production per square mile basis of  
17 land mass, these three contiguous northeastern states make  
18 up the densest milk production region of its size in the  
19 country, the Northeast's largest population base and Class  
20 1 market.

21 The Northeast Order marketing area is depicted  
22 on the federal order map shown as Exhibit 11, Figure 3.  
23 The Northeast Order includes the eastern seaboard  
24 metropolis that includes the city of Boston, New York,

1 Philadelphia, Baltimore, and Washington. Approximately  
2 51.6 million people live within the geographic boundaries  
3 of the marketing area. This region has the largest  
4 population base of any federal order in the country. It  
5 contains 20 million more people than the next largest  
6 federal order marketing area population base. That can be  
7 seen on Exhibit 11, Table 1.

8 The Northeast Order, the handlers it regulates,  
9 and the cooperatives that provide the services assuring  
10 that the market order functions properly and efficiently  
11 serves the largest Class 1 market in the country and  
12 perhaps in the world. During 2001, 10.6 billion pounds of  
13 milk was approved as Class 1 under the Northeast Order.  
14 That can be seen on Exhibit 11, Table 2.

15 This was almost 60 percent more Class 1 milk  
16 than the next largest Class 1 market. The 10.6 billion  
17 pound Class 1 market was larger than the entire quantities  
18 of milk pooled in seven of the remaining 10 federal  
19 orders.

20 Additionally, the Northeast Order is the  
21 largest Class 2 market in the United States and perhaps in  
22 the world. It pools twice as much Class 2 milk as the  
23 next largest Class 2 market under the federal orders,  
24 which can be seen on Exhibit 11, Table 3.

1           Many pool distributing plants also process  
2           Class 2 products such as cream-based products. In 2001,  
3           handlers under the Northeast Order distributed 775.8  
4           million pounds of food cream products. This was the  
5           largest amount under any -- under any federal order,  
6           making up almost 50 percent of all the fluid cream  
7           products under federal orders and represented more than  
8           four times the amount produced and pooled under any other  
9           federal order. That can be seen on Exhibit 11, Table 4.

10           Class 2 is more than pool cream. For instance,  
11           New York and Pennsylvania are leading producers of cottage  
12           cheese, yogurt, and candy and confectionery products, all  
13           Class 2 products.

14           Unlike other Class 1 markets, specifically the  
15           Appalachian, the Southeast, and Florida orders, the  
16           Northeast also is home to a strong manufacturing sector.  
17           The Northeast Order ranks first among all federal orders  
18           in the amount of Class 4 milk that is pooled and ranks  
19           fourth in Class 3 pounds pooled. And this can be seen in  
20           Exhibit 11, Tables 5 and 6.

21           The huge population base supports a large  
22           number of plants. The diversity and demographics that  
23           exist in the Northeastern U.S. has provided a strong  
24           economic environment that has created a very strong

1 processing and manufacturing sector.

2 Presently, there are 75 pool plants and 184  
3 non-pool plants serving the Northeast Order. Referring to  
4 Footnote 2, this information was taken from the Order  
5 Number 1 Northeast Area Pool Handler Location Index, June  
6 2002, counting pool distributing plants, pool supply  
7 plants, partially regulated plants, and other federal  
8 order plants located in a state that makes up the  
9 marketing area, Maine, or West Virginia. And also, the  
10 Northeast Marking Area Non-Pool Plant Location Index for  
11 December 2001, which was entered as an exhibit by Peter  
12 Fredericks earlier this morning.

13 A handful of these plants are operated by dairy  
14 cooperatives. The remaining plants are owned and operated  
15 by proprietary businesses. Although the makeup of the  
16 operators within the industry has changed over time,  
17 historically the Northeast Federal Order has had a very  
18 large number of proprietorially operated milk plants.  
19 Relative to other federal orders, the Northeast has more  
20 pool handlers, 62, and more distributing plants, also 62,  
21 than any other federal order in the country. That can be  
22 viewed on Exhibit 11, Table 7.

23 Keep in mind that a pool operator can operate  
24 more than one plant, either pool or non-pool.

1           A review of Table 7 shows that the Northeast  
2 Order has 26 percent more distributing plants than any  
3 other order and has more than double the distributing  
4 plants than the high Class 1 utilization markets.

5           Many proprietary marking options. An  
6 additional characteristic that makes the Northeast quite  
7 different from the dairy industry in any other part of the  
8 country or any other federal order is the tremendous  
9 quantity of milk that is not marketed through dairy  
10 cooperatives. In the Northeast, a dairy farmer does not  
11 need a dairy cooperative in order to have a milk market.  
12 The tremendous number of competing proprietary milk plant  
13 operators and the even larger number of plants they  
14 operate has created an environment where there are a  
15 tremendous number of competitive marketing options for a  
16 dairy farmer.

17           Historically, proprietary -- proprietary plant  
18 operators had to develop their own dairy farmer milk  
19 supplies to meet a majority of their milk needs. This  
20 still holds true today.

21           The Northeast is home to the largest non-member  
22 population in the U.S. Presently in the Northeast Order,  
23 approximately 42 proprietary handlers have their own milk  
24 supply. And this is evidenced in Exhibit 11, Table 8.

1           Of these, 27 operate Class 1 distributing  
2 plants. And referring to Footnote 3, please note a few  
3 handlers operate more than one plant.

4           The USDA exhibit, "Cooperative and Non-  
5 Cooperative Member Share of Producer Receipts and  
6 Producers, January 2000 to June 2002, presented earlier  
7 today by Peter Fredericks, that depicts the number of and  
8 pounds produced by cooperative member and non-member --  
9 excuse me, cooperative member and non-cooperative  
10 producers, is very telling of the uniqueness of the  
11 Northeast Federal Order.

12           In June of 2002, 4310 dairy farmers whose work  
13 was pooled under the Northeast Order did not belong to  
14 dairy cooperatives. This represented 25.3 percent, more  
15 than one-quarter, of the producers under the Northeast  
16 Order. This milk represented 503.4 million pounds, a huge  
17 quantity. In fact, for 2001, almost 5.9 billion pounds of  
18 milk was delivered to handlers under the Northeast Orders  
19 by producers that were not members of dairy cooperatives.

20           I believe that the Northeast Order has more  
21 milk produced by non-members than any other federal order  
22 in the country. In fact, the amount of milk supplied by  
23 non-members' two proprietary plant under the Northeast  
24 Order represents more milk than was pooled in three

1 federal orders that year: the Western Order, the Arizona-  
2 Las Vegas Order, and the Florida Order.

3 The Northeast is also high -- home to a high  
4 concentration of dairy cooperatives. Dairy farmers in the  
5 Northeast have quite a wide variety of marketing  
6 operations, as evidenced by the 32 proprietary milk  
7 companies that have their own non-member milk supply.  
8 However, discussion of the plethora of marketing options  
9 would not be complete without including information about  
10 independent dairy cooperatives.

11 The Northeast is home to about 78 of the 208  
12 dairy cooperative in the U.S., almost 40 percent.  
13 Referring to Footnote 4, what's taken from the Order 1  
14 Cooperative List, and it is an exhibit by Peter  
15 Fredericks, and the USDA ICBS publication, "Farmer  
16 Cooperative Statistics, 2000."

17 Each of these 78 cooperatives compete in their  
18 own way to maintain or grow their membership roles. Each  
19 cooperative is active in the northeast milk procurement  
20 arena. This being the case, dairy farmers in the  
21 Northeast have about 110 different business entities to  
22 choose from when looking for a milk market.

23 Turning this around a little bit, the 78  
24 cooperatives and 4310 non-members provide 4388 options

1 from which the 259 milk plants, which is the 75 pool  
2 plants and the 184 non-pool plants, can purchase their  
3 milk. Referring to Footnote 5.

4 Actually, the plant purchasing options are  
5 quite a bit greater than that when you consider that in  
6 any given month on average 1000 dairy cooperative members  
7 could exercise their option to leave the cooperative and  
8 change their milk market.

9 Continuing with the information about the  
10 Northeast cooperative structure, many have fewer than 100  
11 members, a number fewer than 20. Some of these  
12 cooperatives have joined Dairy League or Allied Federated  
13 Cooperatives or another large cooperative as member  
14 cooperatives or remain independent but ship their milk  
15 through a cooperative organization.

16 However, others, such as Broomville Farms, --  
17 Farmers, and Middlebury Cooperatives, to name just a few,  
18 are truly independent marketers. By this I mean that  
19 every year they place their milk out to bid and market to  
20 the highest bidder. Usually cooperatives such as these  
21 contract with a Class 1 proprietary plant and ship their  
22 milk to that plant just about every day.

23 Season -- the -- excuse me. Seasonality issues  
24 not unique to the Northeast Order. The Northeast Order

1 Class 1 sales run along a predictable seasonal pattern.  
2 They are at their highest levels when schools are in  
3 session, at -- at their lowest levels in the summer.  
4 Exhibit 11, Figure 4 graphically depicts this. This graph  
5 shows Class 1 deliveries per month divided by the days in  
6 each month for 2000 and 2001. Effectively estimating the  
7 average deliveries per day pooled as Class 1, the seasonal  
8 nature of the Class 1 demand can be seen.

9 Exhibit 11, Figure 5 is another graph. This  
10 one depicts the seasonal nature of the northeast producer  
11 deliveries that are pooled in Class 3 and Class 4 using  
12 the same methodology as used for Class 1. The graph shows  
13 average deliveries per day pooled in the two manufacturing  
14 classes. Again, the predictable and expected seasonality  
15 is shown. Milk receipts are highest in the spring time,  
16 remain high through the summer, slump in the late summer  
17 and fall, and rise again for the year-ending holidays.

18 Exhibit 11, Figure 6 combines data from the two  
19 -- previous graphs to show for 2001 both average daily  
20 deliveries pooled as Class 1 and average daily deliveries  
21 pooled in Classes 3 and 4. As you see, the two groups  
22 trend differently by season.

23 As the average daily Class 1 receipts decline  
24 in the spring and summer, average daily Class 3 and 4

1 receipts increase. In the fall, as the average daily  
2 Class 1 receipts rise, average daily Class 3 and 4  
3 receipts decline. Especially during the autumn months,  
4 tremendously different delivery patterns exist for the two  
5 groups.

6 In closing, the diversity sets the northeast  
7 apart. The diversity created by the northeast geography,  
8 population base, relative concentration of milk  
9 production, and the milk plants that have chosen to invest  
10 is a tremendous asset to the Northeast dairy economy and  
11 its region's dairy farmers. This diversity has set the  
12 Northeast Order apart from any other Class 1 market in the  
13 country and from any other marketing order, for that  
14 matter.

15 Among other things, this is due to the  
16 northeast geography that makes it home to the densest milk  
17 production area of any mega milk-producing region in the  
18 country. Its population base, the largest of any federal  
19 order in the country, anchored by the huge metropolis  
20 along the northeastern seaboard. Dairy demand from this  
21 population base that creates the largest Class 1 and 2  
22 markets maybe in the world and more of the largest Class 3  
23 manufacturing regions in the United States. Its need to  
24 balance what is likely the world's largest Class 1 market

1 by supporting the largest Class 4 market under federal  
2 orders. Resulting in diversity that creates opportunities  
3 for 259 milk plants to thrive within the region, including  
4 32 proprietary companies that buy milk directly from dairy  
5 farmers.

6 There's a huge non-cooperative producer milk  
7 supply, likely the largest in the country and larger than  
8 some federal orders. And a cooperative presence that's  
9 almost 40 percent of this -- country's dairy marketing  
10 cooperatives operate in the region.

11 JUDGE BAKER: Thank you, Mr. Gallagher. That  
12 brings us to almost 3:30, which is time for our afternoon  
13 recess. And I'm sure there will be questions for you when  
14 you return.

15 Thank you. We'll take a 15-minute recess at  
16 this time.

17 (Brief recess)

18 JUDGE BAKER: We are back in order after our  
19 afternoon recess.

20 Mr. Gallagher has completed his presentation,  
21 is that correct, Mr. Beshore?

22 MR. BESHORE: Yes. And Mr. Gallagher is -- is  
23 available now for cross examination.

24 JUDGE BAKER: Very well. Thank you. Are there

1 any questions for cross examination for Mr. Gallagher?  
2 Yes, Mr. Rosenbaum?

3 MR. ROSENBAUM: Your Honor, I'd prefer to go  
4 forward with the USDA people in the room.

5 JUDGE BAKER: Pardon me?

6 MR. ROSENBAUM: I said I would prefer to have  
7 the USDA people in the room.

8 JUDGE BAKER: Oh, I -- I would, too.

9 (Pause)

10 JUDGE BAKER: Mr. Richmond is here.

11 (Pause)

12 JUDGE BAKER: Did you want to proceed, Mr.  
13 Rosenbaum?

14 MR. ROSENBAUM: Yes, Your Honor.

15 JUDGE BAKER: Thank you.

16 CROSS EXAMINATION

17 BY MR. ROSENBAUM:

18 Q Steven Rosenbaum for the International Dairy  
19 Foods Association. Mr. Gallagher, you -- you may have  
20 said this already but it's not in your written testimony.  
21 How long have you been with Dairy League?

22 A Almost seven years. It'll be seven years in  
23 February.

24 Q So, 1995?

1 A '96.

2 Q 1996.

3 A February '96.

4 Q All right. Now, Proposal Number 7, of course,  
5 would be one that would put a marketwide service payment  
6 provision into the Northeast Order, correct?

7 A Correct.

8 Q And you would agree with me that as of today  
9 there are no federal orders that have such provisions?

10 A I'd characterize that because I believe there's  
11 at least one federal order and possibly a couple --  
12 possibly another that has some sort of marketwide service  
13 -- services elements to it. But none like what we are  
14 asking for.

15 Q What orders do you have in mind?

16 A Well, the Southeast Orders have the  
17 transportation differential. And to me, that is a  
18 marketwide service program. And the -- I believe there's  
19 an assembly credit in the Upper Midwest Order which I look  
20 at as a marketwide service program.

21 Q Okay. No other order has a provision whereby  
22 six cents would be deducted from the pool and go to Class  
23 3 and 4 handlers, is that correct?

24 A No, that's not even what -- what would happen

1 necessarily under our proposal, either.

2 Q Well, I mean, you're proposing six cents would  
3 go to any Class 3 or 4 handler who met the requirements  
4 set forth in Proposal 7?

5 A It would -- it would -- let me just -- there's  
6 -- there's going to be another witness later that will --  
7 will get into a lot of the specifics about the particular  
8 proposal. But just to be -- enlighten a little bit, any -  
9 - any handler regardless of whether they operate a, you  
10 know, a Class 3 plant, a Class 4 plant, or a Class 1  
11 plant, has the opportunity to qualify under our proposal,  
12 just that there are certain parameters they have to meet.

13 So it's not just a proposal for a Class 3 or  
14 Class 4 cooperative. It could be proprietary, it could be  
15 a cooperative handler that could qualify.

16 Q Can you -- can you identify any proprietary  
17 handlers currently in the Northeast that would qualify  
18 under the qualification requirements set forth in Proposal  
19 Number 7?

20 A Not that currently pool milk that I'm aware of.

21 Q Okay. How -- how many handlers are there on  
22 that order?

23 A Based on that statistic from the annual  
24 summary, there were 62 that were listed in that.

1 Q All right. And how many of those are  
2 proprietary, do you know?

3 A No, I don't -- no, I don't know.

4 Q All right. Do you know how many plants were  
5 operated by the proponents?

6 A Sure. Let's see. AgraMark has three plants.  
7 The DMS Joint Venture has two plants. Land O' Lakes has  
8 one. So that's six. St. Albans is seven. Maryland-  
9 Virginia, one that is within the area. That's eight. And  
10 Upstate -- Upstate has one distributing plant that's a  
11 pool plant. That's nine. And then Dairy League and Oatka  
12 and Niagara Cooperative are joint venture owners of Oatka  
13 Cooperative. So I suppose that's 10, I guess. I don't  
14 know.

15 Q Are there --

16 A -- for you or should I count --

17 Q Well, are the remaining 52 plants proprietary  
18 plants?

19 (Pause)

20 BY MR. ROSENBAUM:

21 A I'm hesitating because I'm just trying to think  
22 through the marketing region real quick. You know, I  
23 don't know what to call the plant in Ogdensburg, New York,  
24 or the plant in Chataugay, New York, because I believe

1 those are owned by dairy cooperatives. Certainly, the  
2 plant in Ogdensburg right now is operated by a dairy  
3 cooperative. And the plant, I believe, in Chataugay is  
4 owned by a dairy cooperative but not operated by a dairy  
5 cooperative. So I don't know how you want that defined.

6 Q Well, is it fair to say that approximately 50  
7 of the 62 plants in the order are proprietary plants --

8 A -- certainly a clear majority are proprietary  
9 plants. I think that's part of what I was trying to get  
10 through in my -- in my testimony, that a clear majority of  
11 the plants are proprietary plants.

12 Q And so far as you know, none would qualify  
13 under Proposal 7?

14 A As I said, as -- as my knowledge of -- of who  
15 is a pool handler now, I am not sure if any will. But in  
16 fact, I guess based on Peter Fredericks' exhibit, he  
17 indicated that it would just be the ADCNE members that  
18 would qualify, who market more than probably I don't know  
19 what.

20 Q And you're not --

21 A Oh, and -- excuse me. And Allied Federated  
22 Cooperatives. Probably combined, we probably market  
23 almost 70 percent of the milk in the order, or more.

24 Q But they're -- they're a member of your group,

1 too, right?

2 A No, they're not.

3 Q They're not. All right. With that one  
4 exception --

5 A Correct.

6 Q -- everyone who qualifies is a member of your  
7 group, correct?

8 A To my -- to my knowledge.

9 Q Now, since you go back to the mid '90s, are you  
10 aware of the fact that -- that there had been a -- I think  
11 what was called a cooperative service payment provision in  
12 the New York-New Jersey Order?

13 A Yes, I'm aware there was one.

14 Q And are you aware that that went out of  
15 existence January 1, 2000?

16 A Yes, I am.

17 Q And so that the Northeastern Order has lived  
18 without such a provision for the last two and a half years  
19 at this point in time, correct?

20 A Sure.

21 Q Now, your -- your group, ADCNE, attempted to  
22 convince USDA to put a marketwide service payment  
23 provision into the soon-to-be created Northeast Order, is  
24 that correct?

1           A     During federal order reform?

2           Q     That's right.

3           A     Yes.

4           Q     And in fact, back in 1997 when USDA was  
5     soliciting proposals for what to do as part of the order  
6     consolidation -- let me back up. The order reform as  
7     mandated by Congress included the creation of fewer but  
8     larger orders as compared to those that existed prior to  
9     the time that legislation was passed in 1996, correct?

10          A     Correct.

11          Q     And as a result, what had been the New York-New  
12     Jersey Order, which had cooperative service payments, was  
13     necessarily going to join with some other orders that  
14     didn't have it, correct?

15          A     That didn't have cooperative payment  
16     provisions, correct.

17          Q     Okay. And your group urged USDA to have either  
18     a cooperative service payment or a marketwide service  
19     payment in the newly created Northeast Order, correct?

20          A     Yes, we did.

21          Q     And in fact, your group proposed back in 1997  
22     that that payment be six cents a hundredweight, correct?

23          A     I can't remember the rate, but we did propose  
24     some type of program. If you're reading something from --

1 from something we sent in, then I -- I take it as you're  
2 being -- you're correct with the six cents. But I can't  
3 remember the specific --

4 Q Do you recall it was two cents for co-op --  
5 originally it was two cents for co-op services and then  
6 four cents for what was called marketwide services?

7 A I -- I can't remember exactly, but it wouldn't  
8 surprise me if that's what we asked for.

9 Q Okay. And do -- and do you recall that -- that  
10 USDA, when it came out with its proposed rule in 1998,  
11 rejected that?

12 A Yes.

13 Q Now, do you -- do you recall that there was the  
14 opportunity after the proposed rule came out to submit  
15 comments or suggestions or revised proposals? That was  
16 open to everyone?

17 A Yes.

18 MR. BESHORE: Your Honor, if I -- I'd like to  
19 interrupt at this point and object. The -- the record of  
20 the informal rulemaking process mandated by Congress under  
21 the Fair Act is -- is history. It's public record to the  
22 extent it was published in the "Federal Register." I  
23 really do not see the utility in this proceeding of asking  
24 Mr. Gallagher to attest to the secretary's past actions or

1 the Association of Dairy Cooperatives of the Northeast's  
2 requests that were not adopted.

3 This is a different proposal, a different  
4 hearing, a different procedure, a different time, a  
5 different market, a different place, and I think we should  
6 go forward.

7 MR. ROSENBAUM: Your Honor, the very -- the  
8 very questions that Mr. Beshore identified are the ones  
9 that I'm exploring with this witness, whether the  
10 conditions are the same or different. This -- this goes  
11 to the heart of the matter.

12 JUDGE BAKER: I -- I think that you are asking  
13 him whether or not he recalls after the Department  
14 rejected these marketwide payments, then were not comments  
15 received with respect thereto. Is that what you're  
16 getting at?

17 MR. ROSENBAUM: I'm trying to get at what the  
18 position has been of his organization on these issues.  
19 And I'm about to get into questions regarding whether we  
20 have any changed conditions, which is the very heart of  
21 his testimony, I think.

22 JUDGE BAKER: All right. Because it does  
23 reflect what his organization has been doing or has done,  
24 whether there's any change in his --

1                   MR. BESHORE: I didn't hear any questions about  
2 whether there are changed conditions or anything of that  
3 sort.

4                   MR. ROSENBAUM: I've got -- I've got to lay the  
5 predicate.

6                   BY MR. ROSENBAUM:

7                   Q     My question was whether you recall the  
8 organization submitted comments with a revised proposal in  
9 response to the proposed rule in 1998 in which you once  
10 again asked for six cents per hundredweight, this time  
11 entirely as a marketwide service payment?

12                  A     Yeah, that sounds correct.

13                  Q     Okay. And do you recall that that was also  
14 rejected by USDA?

15                  A     There certainly have been changed conditions  
16 since either of the earlier two submissions.

17                  Q     I'm about to --

18                  A     During --

19                  Q     -- I'm about --

20                  A     -- during federal order reform, the immensity  
21 of the tasks and challenge before USDA was tremendous.  
22 And they were very focused on -- on some very political  
23 issues that they maneuvered and navigated through very  
24 well, in my opinion, and came out in the right place. But

1 it took many, many people-hours to get there. And because  
2 they spent so much time on a number of things, it is my  
3 opinion that there were a number of things they just  
4 couldn't get to and couldn't -- didn't have the time to  
5 fully review and reflect upon. And I believe marketwide  
6 service provisions was one of them.

7 Q I think my question was whether you recall that  
8 your proposal was rejected, and I don't think I heard an  
9 answer to that. Was the answer "yes" or "no"?

10 A I don't think they had a chance to fully review  
11 it and so they didn't implement it.

12 Q Okay. It's -- all right. Now, let's look at  
13 your testimony. On page one you -- you talk about how the  
14 northeast is the densest -- strike that.

15 You talk about how the milk shed includes most  
16 of the states of New York and Pennsylvania and also  
17 Vermont. And you talk about the extent to which they  
18 produce substantial quantities of milk, correct?

19 A Correct.

20 Q I take it that was also true back in 1988 and  
21 1999?

22 A Correct.

23 Q And obviously, the combined square mileage has  
24 not changed, correct?

1           A     I'm sure there's a little bit of erosion but  
2     probably didn't change the number very much.

3           Q     And on page two you talk about the -- the --  
4     what you described as being the northeast's largest  
5     population base. And that -- that -- that was the same --  
6     that was true also back in 1988 and 1999, correct?

7           A     Sure. I'm sure it was.

8           Q     I think I misspoke myself. That -- that was  
9     true in 1998 and '99, correct?

10          A     Sure. Then, too.

11          Q     All right. And the degree to which the  
12     Northeast Order would pool more Class 1 milk than any  
13     other order, that was also something that was known back  
14     in 1998 and '99, correct?

15          A     -- repeat that question?

16          Q     Yes. You talk in the second full paragraph on  
17     page two about the fact that the Northeast Order pools  
18     more Class 1 milk than -- than any other federal order,  
19     correct?

20          A     Correct.

21          Q     And that was something that was -- people knew  
22     that was going to happen back in '98 and '99, correct?

23          A     You mean, based on the combination of the  
24     orders?

1 Q Right.

2 A Sure. I think so.

3 Q Okay. And the same is true for the fact that  
4 it would be the largest Class 2 market? That was known  
5 back in 1988, '89, as well, correct?

6 A Maybe. I don't know. Possibly. I mean, the  
7 Class 1 -- the Class 1 thing was a little bit more known  
8 because of the -- the pattern of the sales of the Class 1  
9 distributors. The pooling relationships for Class 2  
10 doesn't necessarily mean that you could necessarily guess  
11 that that would be the case but maybe you could have.

12 Q All right. And -- and the percentage of milk  
13 that was going to belong to non-co-op members, that -- you  
14 say that 25.3 percent is non-co-op in the Northeast Order,  
15 is that correct?

16 A Correct.

17 Q And once again, that -- that was a -- the --  
18 the amount that USDA had predicted would be the case back  
19 in 1988 and '89?

20 A I don't know what they predicted.

21 Q The -- the percentage itself has not changed  
22 since then, has it? By any significant --

23 A I -- to a significant -- probably not to a  
24 significant degree.

1 Q There's been no significant decline in co-op  
2 membership since the 1988, '89, in the Northeast Order?

3 A I hope not. I hope we're growing.

4 Q Well, I'd rather have your -- the facts rather  
5 than your hope.

6 A I don't have the statistics. I don't know.

7 Q All right.

8 (Pause)

9 BY MR. ROSENBAUM:

10 Q On -- on Proposal Number 7, am I correct that a  
11 -- that if a -- if a handler operated a cheese plant and  
12 operated it at 100 percent capacity year round, would that  
13 handler qualify for marketwide service payments?

14 A I don't know. You'd have to give me some more  
15 parameters on what that cheese plant was doing and what  
16 they did with their milk supply.

17 Q Well, I'm assuming that their milk was less  
18 than -- less than -- less than 65 percent of it went to  
19 Class 1 use and that they met the minimum requirements of  
20 -- of Proposal 7 with respect to how much milk to handle.

21 A That would mean that they'd have to pool milk.

22 Q Right.

23 A They'd have to meet the pool supply plant  
24 definition.

1 Q Right.

2 A That in the fall of the year they'd have to  
3 have 20 percent of their producer supplies transferred or  
4 diverted to Class 1. And if they met those provisions and  
5 they met the other parameters that we would have set up,  
6 then they could qualify, yes.

7 Q Okay. So that if -- if there were a Class 3  
8 cheese plant that runs full out, meets the minimum  
9 requirement to be a supply plant, that's now in the order,  
10 they would qualify for marketwide service payments without  
11 changing their behavior at all? Well, if your proposal  
12 were adopted.

13 A Keep in mind I -- I don't think there is -- and  
14 theoretically, we can come up with a lot of different  
15 scenarios and we can spend a lot of time discussing them.  
16 But I'm not aware of a cheese plant at this point -- our  
17 proposal would meet those qualifications. Most cheese  
18 plants don't have their own producer supply. So they  
19 don't pool milk so they wouldn't be able to qualify.

20 Q Are there Class 3 plants pooled on the order  
21 today?

22 A Yes, there are.

23 Q And am I correct that for a Class 3 plant your  
24 proposal does not add any performance requirements

1       whatsoever?  As long as it's already --

2             A     Sure.

3             Q     -- a supply plant --

4             A     -- sure -- sure there are.  First of all, if --  
5       if they're carrying a large enough producer supply that  
6       they're meeting the shipping provisions, they've --  
7       they've shown that they've got an association with the  
8       Class 1 market.  And if they're of that size that they can  
9       meet this qualification, they are likely doing some  
10      balancing for the market.

11            And additionally, you -- if you read further  
12      into that, there is some requirement of a -- I'll call it  
13      the "call" provision, based on my former Order 2  
14      background.  The first call goes to the -- goes to the --  
15      those handlers that would be receiving marketwide service  
16      payments when Class 1 is short.

17            So there are certainly additional requirements  
18      in this theoretical example of a cheese plant.

19            Q     Well, let me go through the requirements.  You  
20      -- you have to meet the supply plant requirements, is that  
21      right?

22            A     Yeah.  Excuse me for a second -- coach my --  
23      you want me to go through with that or you want me to wait  
24      for Bob to testify to it?

1 MR. BESHORE: Well, we do have -- as I  
2 indicated at the outset, in an attempt to maybe streamline  
3 some of the examination -- although I don't want anybody  
4 to be cut off -- there is -- one of the witnesses, Mr.  
5 Wellington, is going to testify both on direct and of  
6 course be available to cross examination about all the  
7 detailed operations of Proposal 7, qualification criteria,  
8 et cetera. Mr. Rosenbaum will certainly be able to ask  
9 him about that and Mr. Gallagher will come later again to  
10 testify.

11 But I don't want to cut him off. He's  
12 certainly entitled to inquire of Mr. Gallagher's knowledge  
13 of the market and the proposal with respect to how it  
14 worked. But he's going to have lots of opportunities to  
15 inquire of extremely knowledgeable people.

16 JUDGE BAKER: Very well. That's very gracious  
17 of you, Mr. Beshore.

18 Mr. Rosenbaum, you heard that and can be guided  
19 accordingly.

20 MR. ROSENBAUM: I will, Your Honor.

21 JUDGE BAKER: Thank you.

22 THE WITNESS: I just -- I know Bob has been  
23 working really hard on his statement and I don't want him  
24 to have to cut anything out.

1 (Laughter)

2 (Pause)

3 MR. ROSENBAUM: That's all I have at this time,  
4 Your Honor.

5 JUDGE BAKER: Thank you, Mr. Rosenbaum. Are  
6 there other questions for Mr. Gallagher? Mr. Vetne?

7 MR. VETNE: I'm not sure whether this is best  
8 addressed to Ed Gallagher or to Marvin Beshore. But for  
9 me to know to -- to whom to address questions, it would be  
10 good to have a little preview of the general subject  
11 matter of the witnesses to follow, including your  
12 subsequent testimony.

13 For example, a witness to describe the general  
14 operations of -- of ADCNE and, you know, how it supplies  
15 the market and where its customers are. Is that you or is  
16 that somebody else or is that you later?

17 JUDGE BAKER: Perhaps you'd better ask Mr.  
18 Beshore, Mr. Vetne. I think you did sort of outline it  
19 originally for him.

20 MR. BESHORE: I -- I did attempt to provide a  
21 preview -- I thought I did -- that Mr. Vetne might be  
22 asking for. But first of all, you know, the -- the  
23 association is not an operating entity. It's a group of  
24 seven, you know, operating entities.

1           Mr. Gallagher is directly employed or  
2           affiliated with -- with several of those and he will be  
3           presenting later very detailed information with respect to  
4           the operations of Dairy League, DMS, and DFA. So if  
5           that's of any help, those particular questions are best  
6           addressed later to Mr. Gallagher.

7           But I don't want to cut any of these gentlemen  
8           short in their -- in their questioning here. I just tried  
9           to direct them somewhat.

10           JUDGE BAKER: Very well. Mr. Vetne, it would  
11           seem reasonable that after the presentation by the  
12           proponents of their Proposal Number 7, if you still have  
13           questions, you could ask for the recall of a witness or go  
14           into whatever questions you might have.

15           MR. VETNE: Right. I'll defer for now. Thank  
16           you.

17           JUDGE BAKER: Very well. Thank you, Mr. Vetne.  
18           Are there any other questions? Yes, Mr. Arms?

19           MR. ARMS: Yes, Your Honor. I just have a  
20           couple clarifying questions.

21           JUDGE BAKER: Very well. Thank you.

22           SPEAKER: Use a mike and identify yourself.

23           MR. ARMS: Following the rule, I will identify  
24           myself again. My name is David Arms. I'm economic

1 consultant to the New York State Dairy Foods Group.

2 CROSS EXAMINATION

3 BY MR. ARMS:

4 Q Ed, in your statement or in cross, I've  
5 forgotten which, I believe you likened the cooperative  
6 payment under Proposal 7 as being similar to that which  
7 applies in certain southeastern orders in the way of  
8 transportation credit allowances from the pool, is that  
9 correct?

10 A Let me just clarify something, David. They're  
11 -- they're not cooperative payments. They're marketwide  
12 service payments. And any handler that meets the  
13 requirements is eligible to receive them. They weren't  
14 designed exclusively to be paid just to dairy  
15 cooperatives.

16 And I -- I alluded to there are other  
17 marketwide services that exist in federal orders. But I  
18 don't believe that there is any specifically structured  
19 the way that we have structured ours.

20 Q Isn't it true that, for example, under Proposal  
21 -- under Order 5, the Southeastern Order, that in fact  
22 Milk Galleries paid -- I believe -- seven dollars per  
23 hundredweight all year long? It is then essentially  
24 placed in escrow within a reserve and -- (inaudible) --

1 July through November only and in the form of  
2 transportation allowances. Isn't that correct?

3 A Sounds about right. I don't know if all the  
4 exact nuances you spoke about are correct. But that is a  
5 vastly different market than this market. I testified to  
6 the uniqueness of the northeast market. And because it's  
7 unique, it requires a different solution to this  
8 externality which we're faced with. And so we came up  
9 with a different solution. It's not -- we're not trying  
10 to shoe horn something, create another order into ours.  
11 It maybe wouldn't work as well in our order.

12 Q Well, I guess that's where I was confused  
13 because I felt in your statement that you were -- likened  
14 -- comparing the two as similar and providing marketing  
15 services. And I'm asking you, is there not a big  
16 difference from the standpoint that it is regarding the  
17 transportation allowances that they are in effect paid by  
18 handlers rather than, as well as, deducted from the  
19 uniform price computations?

20 A I'm glad we had this conversation so we could  
21 clarify that. That's correct. And if you'd like to make  
22 a proposal to have us amend our proposal to charge

1       Class 1 instead of charging the pool, we -- we would  
2 consider that.

3           Q     As further clarification and on evidence that -  
4 - on data that was presented earlier by Peter Fredericks  
5 and in response to my questions regarding the operations  
6 of Detrick's Milk Products, could you clarify for the  
7 record the status -- the change in status of the two  
8 plants involved at Newbury Center and at Reading,  
9 Pennsylvania first as Detrick Milk Products, LLC and now  
10 as something a little different and how that has flowed  
11 through? I understand that from a response that -- can  
12 you identify us as to those points.

13          A     Are you referring to a specific exhibit that  
14 Peter had that had different names?

15          Q     It list -- the listings that he had under "Pool  
16 Supply Plants" that showed Detrick's Milk Products in  
17 different regulatory status during the years 2000, 2001,  
18 and 2002.

19          A     Okay. The current -- currently, both the  
20 Detrick's -- are pool supply plants. One is under Dairy  
21 Marketing Services and one is under Detrick's, LLC. And  
22 maybe more for -- I say -- what -- why -- why are they  
23 different instead of the same? I don't know. Variety is  
24 wonderful, so we just sort of -- when we had the option to

1 make the Middlebury Center plant a pool supply plant based  
2 on its operation. We decided just to keep it as  
3 Detrick's, LLC, and not make it DMS. We could have made  
4 it DMS. We just -- wasn't any -- wasn't any strategic  
5 reason behind that.

6 Q What I'm trying to clarify is that, isn't it  
7 true that the ownership of Detrick's Milk Products, LLC,  
8 involved a three-way ownership essentially with two  
9 cooperatives, namely D&E, DFA, Dairy Farmers of America,  
10 and the third party being Detrick's, a proprietary  
11 operator, so that it was in fact a blend of both the  
12 cooperative and proprietary ownership. Is that correct?

13 A And it's correct, and the operative word is  
14 "was." Those plants are now owned by Dairy Farmers of  
15 America.

16 Q So its status has changed from being --

17 A That's what your question is, yeah.

18 Q I'm just trying to get at it to clarify for the  
19 record because we -- we have different types of ownerships  
20 over this period and we also have different regulatory  
21 status shifting from pool status, then to non-pool status,  
22 and then -- now back to pool status for -- I don't know  
23 that it applies to both plants, however.

24 A Okay. Is that a question?

1           Q     Yeah. My question was is whether you could  
2 clarify in detail what was referred that you -- by Mr.  
3 Beshore that you would be able to answer for the record  
4 and clarify for the record the regulatory status of those  
5 two plants.

6           A     I think I just did. They're both pool supply  
7 plants. Is that -- I'm trying to answer your question --

8           Q     Okay. How currently are --

9           A     Yes.

10          Q     Okay. Do you notice that in the listing for  
11 the year 2002, which is the current year, they have listed  
12 the two under different corporate identities?

13          A     Yeah. I just -- I just talked about that.

14          Q     Well, the -- they're not -- they're not the  
15 same. You said that they were just -- I believe you  
16 answered me by saying that they both principally have a  
17 certain ownership status.

18          A     Right. But the -- the name of the company  
19 hasn't changed.

20          Q     The -- but the ownership has?

21          A     Yes.

22          Q     So now, for the record, we all understand that  
23 they are solidly cooperatively owned?

24          A     Yes.

1 MR. ARMS: Thank you.

2 JUDGE BAKER: Very well. Are there any other  
3 questions for Mr. Gallagher? Yes, Mr. English?

4 CROSS EXAMINATION

5 BY MR. ENGLISH:

6 Q Do you have Exhibit 5 with you -- the market  
7 administrator -- Order 1's data?

8 A Yep.

9 Q Okay. If you could go to Figure 5?

10 A What page is that?

11 Q I'm sorry. I'm going back and forth. Exhibit  
12 -- your Exhibit 11, Figure 5. I want you to have that in  
13 front of you, and I want you to have Exhibit 5 in front of  
14 you. And I'm going to ask questions about Figure 5.

15 A What -- which of my exhibits?

16 Q Figure 5.

17 A Yep.

18 Q It's your graph --

19 A Yep.

20 Q -- that shows Federal Order -- it's Exhibit 11.

21 A Yep. Got it.

22 Q And this is Class 3 and 4 receipt per day.

23 A Yep.

24 Q Is -- is this based upon a federal order of

1 statistics of producer receipts or actual receipts at  
2 those plants?

3 A Producer receipts. It's the data that you'd  
4 get out of the Glen PPD announcement by class.

5 Q So by way of example, if you open up to page 80  
6 on Exhibit 5?

7 A Page 80?

8 Q And look down at October 2001. You have net  
9 movements for October of negative 29,794,000, which is as  
10 I understand it means that that much more milk moved into  
11 the order from outside, correct? In terms of diversions?

12 A I'm reading the title. Hold on for a second.

13 (Pause)

14 BY MR. ENGLISH:

15 A Yeah, but I believe -- okay. Yeah. It wasn't  
16 pooled here, though. It wasn't --

17 Q No, that's my point. It's not pooled. So that  
18 -- that difference of milk on a monthly basis compared to  
19 your per day basis is not reflected on Figure 5, correct?

20 A Yeah, but you don't know how much of that went  
21 to a Class 3 or Class 4 plant, either.

22 Q Okay. But that milk was available for Class 3  
23 or 4?

24 A Oh, I don't know. Could have been.

1           Q     Similarly, if there were -- if there's producer  
2     milk that the data reflects produced in these states that  
3     was pooled elsewhere, that milk would not be available to  
4     show up on Figure 5. Whether or not it would actually or  
5     not, it would simply not be available, right?

6           A     So this is pooled milk on Order 1 that was  
7     diverted to other order pool plants?

8           Q     No, I'm now going to milk produced in the state  
9     of New York that was pooled on Order 5.

10          A     Okay.

11          Q     Because it's pooled on Order 5, from your  
12     answer to my question earlier, it doesn't show up in  
13     Figure 5 at all, right?

14          A     Correct. This is only Order 1 pool milk in  
15     -- in Figure 5.

16          Q     So you have not attempted at all in Figure 5 to  
17     create a chart that would show milk produced in the states  
18     for the marketing area that was received as Class 3 or  
19     Class 4?

20          A     I haven't, no.

21          Q     Is it true that diversions from other orders  
22     are required first to be assigned to Class 4, if -- if  
23     available?

24          A     I believe that's correct, yeah.

1           Q     So to the extent you had net diversions from  
2 other orders of 29,794,847, it is more likely than not  
3 that it would be in Class 4?

4           A     Let's -- let's think -- say it went to Tuscan  
5 Farms in Union, New Jersey of all places. They don't have  
6 any Class 4. They have whatever they have. It's a Class  
7 1 distributing plant. They probably make some Class 2  
8 there. Probably first get assigned to Class 2, and then  
9 if all the Class 2 was used up, I think how they work it,  
10 it gets into Class 1. So I -- you know --

11          Q     But it's not showing up as eligible milk  
12 available in this pool regardless, correct? However, it's  
13 being classified. It's not going to show up other -- you  
14 know, on Figure 4 or Figure 5?

15          A     No -- no, that page 80 chart, it's not eligible  
16 milk in the pool. You're right.

17          Q     So to the extent that -- that Figure 4 -- if --  
18 assuming it went to Class 1, under your assumption, other  
19 than -- rather than Class 4 under mine, it's -- it's not  
20 going to show up there either, correct?

21          A     No.

22          Q     Even though there was 29 million pounds for the  
23 month --

24          A     Correct.

1 Q -- available?

2 A It wasn't an identification of, say, packaged  
3 sales within the marketing area. It's just producer  
4 receipts pooled as Class 1. So it would only cover the  
5 pool receipts of Federal Order 1.

6 MR. ENGLISH: That's all I have. Thank you.

7 JUDGE BAKER: Thank you. Mr. Arms?

8 MR. ARMS: David Arms, economic consultant.

9 CROSS EXAMINATION

10 BY MR. ARMS:

11 Q You answered in response to questions by Mr.  
12 English --do you use specifically Tuscan Farms as an  
13 example of a very large factory mostly Class 1. Is that  
14 correct?

15 A I did refer to them, yes.

16 Q Yes. And you indicate that for plants such as  
17 this wouldn't have Class 3 or 4, right?

18 A I would -- I don't -- I don't know the specific  
19 operation of the plants. But relative to Peter  
20 Fredericks' testimony earlier, the -- they're going to  
21 have 85 to 90 percent Class 1. I would say just based on  
22 that, I know they do some Class 2. They're not going to  
23 have much anything else.

24 Q Isn't it true --

1           A     -- something, I suppose.

2           Q     Okay. I'm sorry?

3           A     I said, other than what may end up in  
4 inventory.

5           Q     Yes, in inventory isn't it true that the order  
6 requires a pool distributing plant that inventories bulk  
7 milk -- all bulk milk is assigned to Class 4, is it not?

8           A     In -- in -- inventory.

9           Q     Prio to be assigned as -- required -- to --  
10 Class 4 under the rule of the Northeast Order Agreement.

11          A     That is in -- ending inventory?

12          Q     Yeah.

13          A     Yeah.

14          Q     So it's all pooled marketing order, correct?

15          A     Sure. But I don't think it's going to be very  
16 much milk in a Class 1 plant.

17          Q     Like in this particular market that you  
18 referred to, would you agree that Tuscan Farms -- the size  
19 of that order, probably exceeds the incoming volume of  
20 some of the smaller orders that would be a part of this.  
21 Would you agree with that?

22          A     I -- I -- I don't have any knowledge of that.  
23 If you want to testify to that later, sure, go ahead. But  
24 I don't know.

1           Q     It is possible, is it not, a very large share  
2     of the milk that might come in under the covered order is  
3     assigned to the Class 4 at the receiving plant, such as  
4     Tuscan, is that correct?

5           A     No, I'm not going to -- I'm not going to agree  
6     with that. I'm sorry. You can testify to that, or you  
7     have, I guess. I don't know.

8           MR. ARMS: Thank you.

9           JUDGE BAKER: Are there other questions of Mr.  
10    Gallagher? Mr. English?

11                           CROSS EXAMINATION

12                           BY MR. ENGLISH:

13           Q     I'm sorry. Let me go back to the -- your  
14     assumption that it could be in Class 1. Is it not true  
15     under most federal orders, especially those to the south,  
16     that if milk was diverted and used as Class 1, it would  
17     not be producer milk under that other order and therefore  
18     wouldn't be treated as diverted in the first place?

19           A     It may -- you may be right about that. If  
20     you're reading from the order --

21           Q     -- yeah --

22           A     -- take it that you're -- that you're reading  
23     it correctly.

24           Q     So that would mean that it's unlikely to be

1 Class 1, correct?

2 A My point isn't necessarily it was going to be  
3 Class 1. It's not necessarily going to be Class 4,  
4 either. That's --

5 Q But -- but in terms of being Class 1, it's not  
6 likely, correct?

7 A Probably not.

8 MR. ENGLISH: Thank you.

9 JUDGE BAKER: Thank you. Are there any other  
10 questions of Mr. Gallagher? There appear -- oh, yes. Mr.  
11 Tosi?

12 CROSS EXAMINATION

13 BY MR. TOSI:

14 Q Hi. Thanks for coming to the hearing. I need  
15 to ask you just a couple of questions so that I'm -- I'm  
16 clear about what I can ask you.

17 Can you --

18 A You can ask me whatever you want.

19 Q Okay. Either -- either as your -- in your  
20 capacity here speaking on behalf of the Northeast  
21 Cooperatives or as Dairy League or the other capacities  
22 that you mentioned in your testimony, can you talk about  
23 any over order premiums or how milk -- how you buy and  
24 transact milk either on behalf of the entire group or your

1 organization specifically?

2 A Yeah. A lot of that I'm going to get into  
3 later in my testimony about how DMS balances which I'm  
4 going to do after we go through the lineup of Dr. Ling,  
5 Bob Wellington, and Dennis Schad. And I'm going to come  
6 back and talk about that.

7 Q Okay. Are -- are you able or -- or would you  
8 be willing to answer any questions regarding some -- I'm  
9 not quite sure how to characterize them, but questions  
10 that would get at the -- the theory behind marketwide  
11 service payments?

12 A Sure. Again, Bob Wellington's going to --  
13 going to testify to that pretty extensively when he gets  
14 here. And then I'll be up again afterwards if there are  
15 any other questions he hasn't cleared up in his testimony.  
16 I'd be more than happy to answer -- or if you'd like, I  
17 can answer them now.

18 Q Okay. Well, I think I'll -- I'll just hold  
19 back on that.

20 A Okay.

21 Q One of the questions that I wanted to ask was  
22 in response, I think, to a question by Mr. Rosenbaum. You  
23 seem to have expressed the opinion that the Department did  
24 not fully consider the marketwide service proposals that

1 were offered by the Northeast during order reform.

2 A That's --

3 Q Was that your testimony?

4 A That was my -- testimony based on just an  
5 opinion I had. You guys were extremely busy with a lot of  
6 things and I -- I -- I -- I'm not sure -- I mean, you can  
7 tell -- you can tell me if I'm wrong. You didn't have as  
8 much --

9 Q I was just curious as to how you formulated  
10 that opinion or --

11 A I just -- I -- I just know with talking with  
12 you guys and talking with others in the Department that  
13 you spent a lot of -- rightfully so -- a lot of time on a  
14 lot of things. And it was just such a massive change  
15 that, certainly, we didn't have the -- the time to have  
16 this kind of discussion like we're having today. That  
17 didn't go on to any great degree. And so that, to me,  
18 tells me that maybe you guys were just too busy with other  
19 things that maybe you didn't get the chance for -- to  
20 hear all -- all -- everything we had to say about it.

21 Just -- you know, I'm not -- I'm not trying to  
22 -- please don't think I'm trying to pick a fault or  
23 anything.

24 Q No, no.

1           A     I'm just saying you just --

2           Q     I just wanted to ask -- I just wanted to  
3 understand the nature of the opinion.

4                     Just regarding your written statement or your  
5 testimony, you -- I think you did an excellent job of  
6 describing very interesting features of -- of the  
7 Northeast marketing area in general. And I -- I was  
8 curious here as -- if you could just hypothetically  
9 consider these things.

10                    If, for example, we had a marketing area or  
11 region that did not necessarily exhibit, for example, the  
12 volume of Class 1 milk or the population base, the number  
13 of plants, the different marketing options, and some of  
14 the other things that you've pointed out there, would the  
15 notion of balancing still be important to a market that  
16 perhaps didn't have those unique features that you  
17 described here for the Northeast?

18           A     That's a -- that's a very good question. I  
19 believe it still would. The solution to a particular  
20 markets balancing issue may not be the same as what we're  
21 offering. I think this -- this solution that we've  
22 offered, I think, fits our market. It may not fit a  
23 market as maybe theoretically you're describing. But  
24 still, balancing would be important in that market.

1           Q     Okay.  Regardless of unique features of a  
2     market, would -- would you -- would you think that it  
3     would be important that in a market that would exhibit a  
4     large percentage of non-member milk versus cooperative  
5     milk always be an example of perhaps the need for a  
6     marketwide service payment?

7           A     I -- I would believe so, yeah.  If you -- if  
8     you look at -- if you look through the Northeast where  
9     there -- you know, I don't know for the largest -- where  
10    the greatest number of non-members and -- I think we do.

11                  But you look through the northeast and you  
12    really look at who's doing the balancing on a continuous  
13    basis, and we'll get into all this stuff with some of the  
14    other witnesses, I think you're really going to find that  
15    it's really the cooperatives that are stepping up and --  
16    and operating that milk balancing grid.

17           Q     Okay.  So then, in and of itself, there's  
18    nothing particularly special that the northeast has a high  
19    density of production, you know, per square mile or the  
20    fact that it's a large -- large population?  That -- that  
21    in and of itself really doesn't speak to the notion of  
22    cost of balancing and the need perhaps to consider some  
23    way to compensate for that?

24           A     Well, the population does because that creates

1 the huge Class 1 demand that needs to be balanced. These  
2 things that I talked about weren't just reasons -- weren't  
3 just reasons why we need balancing, reasons why I think we  
4 need a unique solution that would be different than  
5 another marketing order solution.

6 Q Okay. In some of the other cross examination  
7 that you underwent, and I think it's also supported in  
8 part by Mr. Fredericks' Exhibit 5 on page 81, where at  
9 least the market administrator's office is trying to apply  
10 Proposal 7 historically. I'm counting about seven  
11 different entities, all cooperatives, that would qualify  
12 for the six cents per hundred that's part of Proposal 7.  
13 Would that be correct?

14 A Yes.

15 Q Okay. Now, all -- keep that in mind, and then  
16 I'll relate this back to your testimony. You did an  
17 excellent job of depicting the diversity of marketing or -  
18 - excuse me, the -- the large number of marketing options  
19 in the northeast. You note in your testimony that there  
20 are, for example, 184 non-pool plants.

21 A Yes.

22 Q And -- and when we -- when we look at that with  
23 respect to how they're plotted out in Exhibit 5, they seem  
24 to be scattered --

1           A     Throughout the northeast.

2           Q     -- throughout the northeast and -- and in areas  
3 that we would describe as high-price zones, if you will?

4           A     Yes. Well, let me back up. They're scattered  
5 throughout the northeast in all kinds of price zones.

6           Q     Right. In all kinds of price zones. Thank  
7 you. I'm sorry. I didn't want to put words in your  
8 mouth.

9                     I guess, in that regard, while any one of these  
10 184 plants that are not co-op, well, any one of them may  
11 not be individually important but the notion that 184 of  
12 them collectively, taken as a whole, would you consider  
13 them to be -- their existence and the fact that they're  
14 buying milk to maintain their operations to be performing  
15 a -- an important balancing function for the Northeast  
16 Market?

17           A     Definitely so. When I -- I come back and I  
18 talk about how DMS balances, I'm going to talk about how  
19 DMS uses its portfolio theory of all the milk plants in  
20 the order to help mitigate our balancing costs.

21                     MR. TOSI: That's all we got. Thanks.

22                     JUDGE BAKER: Thank you very much. Are there  
23 any other questions of Mr. Gallagher? Mr. Beshore?

24                     MR. BESHORE: Just a couple of questions on

1 -- on redirect.

2 REDIRECT EXAMINATION

3 BY MR. BESHORE:

4 Q With respect to the -- the differences in the  
5 ADCNE proposals here versus those advanced during the  
6 market reform process, Fair Act informal rulemaking  
7 process when we didn't have the -- the forum we do today.  
8 Are there some -- some important data sets that were  
9 developed after that process and that we're providing here  
10 today that we -- and that were developed in response to  
11 the Department's comments in those -- in those decisions  
12 that we have available here today, such as the study that  
13 was done by Dr. Ling?

14 A Absolutely. Almost an interactive process, I  
15 would say, that if we coached a little bit and saying help  
16 -- you guys need to come up with additional information  
17 and we've gone back and gotten that information.

18 Q We tried to respond to the, you know, the  
19 comments that were made there both in the employment area  
20 and in the final decision?

21 A Absolutely.

22 Q Did we have at that time the information that  
23 we have today with respect to the -- of course, we didn't  
24 have Order 1 as we do today, right? So no data from Order

1 1 at all?

2 A Correct.

3 Q I mean, current Order 1.

4 A Correct.

5 Q Okay. So we didn't have the data that Peter  
6 Fredericks has already presented.

7 With respect to where the non-members in the  
8 order ship their milk day in or day out or where the  
9 cooperative members in aggregate deliver their milk day in  
10 and day out, correct?

11 A Correct.

12 Q Okay. We also didn't have the day of the week  
13 delivery data, which hasn't yet been presented but which  
14 was submitted to the Department with request for the  
15 hearing, showing those types of balancing activities,  
16 correct?

17 A That's -- that's correct.

18 Q Okay. And Mr. Schad's going to -- going to  
19 present those -- that information?

20 A Yes, he is.

21 Q Okay. Now, we also did not have at that time  
22 the information Mr. Fredericks presented with respect to  
23 the aggregate operations in terms of receipts of  
24 manufacturing with the seven cooperative balancing plants

1 in the northeast, correct?

2 A That is also correct.

3 Q Are those some of the differences between the -  
4 - just some of the differences between where we were  
5 several years ago and where we are today?

6 A They're some of the huge differences.

7 MR. BESHORE: Thank you.

8 JUDGE BAKER: Thank you. Are there any other  
9 questions of Mr. Gallagher?

10 (No response)

11 JUDGE BAKER: Apparently there are none. Thank  
12 you very much, Mr. Gallagher.

13 THE WITNESS: Thank you.

14 (Whereupon, the witness was excused.)

15 JUDGE BAKER: Mr. Beshore, do you wish to  
16 continue presenting your witnesses?

17 MR. BESHORE: Yes. At this time we are asking  
18 Dr. Charles Ling to testify. Now, he is -- he has been  
19 requested to come and present testimony by parties other  
20 than -- than ourselves. But if it's agreeable with him,  
21 we would -- and with Your Honor, we would like to ask him  
22 to testify at this time.

23 JUDGE BAKER: Very well. Mr. Beshore, prior to  
24 that, did you intend to move into evidence exhibits marked

1 for identification 10 and 11?

2 MR. BESHORE: I -- I did, and I would like to  
3 request that at this time.

4 JUDGE BAKER: Are there any questions or  
5 objections with respect thereto?

6 (No response)

7 JUDGE BAKER: Hearing none, Exhibits 10 and 11  
8 are hereby admitted and received into evidence.

9 (The documents previously  
10 marked for identification as  
11 Exhibits 10 and 11 were  
12 received in evidence.)

13 Whereupon,

14 CHARLES LING

15 having been first duly sworn, was called as a witness  
16 herein and was examined and testified as follows:

17 MR. BESHORE: Before Mr. Ling begins his  
18 testimony -- the study, which is "RBS Research Report 188"  
19 -- the publication, I should say, "Cost of Balancing Milk  
20 Supplies, Northeast Regional Market, RBS Research Report  
21 188," United States Department of Agriculture, Rural  
22 Business Cooperative Service, copies of which Dr. Ling has  
23 brought along and provided for the reporter and made  
24 available to everyone in the -- in the room. I would ask

1 that it be marked for identification as Exhibit 12 in this  
2 hearing.

3 JUDGE BAKER: Very well. It shall be so  
4 marked.

5 (The document referred to was  
6 marked for identification as  
7 Exhibit 12.)

8 MR. BESHORE: And I know Dr. -- Dr. Ling has a  
9 short statement which he would proceed with. I think I  
10 would like to, as a -- as a formality but an important  
11 one, before he even proceeds request that his testimony be  
12 taken as that of an expert in his field of agricultural  
13 economics and dairy manufacturing plant operations. I  
14 don't know that we need to do any more than -- than offer  
15 -- before he even testifies for somebody with Dr. Ling's  
16 known and acknowledged background and experience. And I  
17 would so offer him at this time.

18 JUDGE BAKER: Be unusual before any testimony -  
19 -

20 MR. BESHORE: I understand. It's an unusual --  
21 we have an unusually well-qualified gentleman.

22 JUDGE BAKER: Could we not wait until he gives  
23 his qualifications?

24 MR. BESHORE: We're --

1 JUDGE BAKER: Would that be --

2 MR. BESHORE: I'm certainly -- I'm certainly  
3 willing to do that.

4 JUDGE BAKER: Very well. Otherwise I think  
5 we'd set a precedent that we could just come in and say,  
6 so-and-so is an expert and we're not going to tell you why  
7 he's an expert.

8 MR. BESHORE: Okay.

9 JUDGE BAKER: Thank you.

10 DIRECT EXAMINATION

11 BY MR. BESHORE:

12 Q Would you -- would you proceed with your --  
13 your brief statement of background, Dr. Ling? And after  
14 you get through the first -- first paragraph there, we'll  
15 go through this formality that I just initiated.

16 A Okay. My name is Charles Ling, I am an  
17 economist with Services Program of USDA's Rural Business  
18 Cooperatives Service, RBS. Serving as program leader for  
19 dairy aspect program since 1988. For about five years  
20 prior to joining Rural Cooperative services in 1978 I was  
21 an agricultural economist -- (inaudible) -- in New York  
22 City. I received my BS degree from -- (inaudible) -- in  
23 economics.

24 I'm going to testify -- (inaudible) -- cost of

1 balancing the Northeast Region Market -- RBS --  
2 (inaudible) -- which is cited as the supporting argument  
3 for Proposal Number 7 of this hearing.

4 Q Now --

5 JUDGE BAKER: Now -- now, Mr. Beshore.

6 BY MR. BESHORE:

7 Q Okay. At this point I would just like to ask  
8 another question or two in amplification --

9 JUDGE BAKER: Very well.

10 BY MR. BESHORE:

11 Q -- of your background. Have you been involved,  
12 Dr. Ling, in studies of the operations of -- of dairy --  
13 milk manufacturing plants?

14 A For almost 20 years, yes.

15 Q Okay. And have you studied the operations of  
16 such plants from coast to coast and north to south in the  
17 United States?

18 A That's correct.

19 Q And you've studied the -- the costs of  
20 operation of such plants at -- in great depth and over all  
21 those years, is that correct?

22 A That's correct.

23 MR. BESHORE: Okay. With -- with that, I would  
24 offer Dr. Ling as an expert in the fields I referenced of

1 agricultural economics and dairy manufacturing plant  
2 operations.

3 JUDGE BAKER: Are there any questions or  
4 objections with respect to the request that Dr. Ling be  
5 declared an expert in the fields of agricultural economics  
6 and dairy plant operations?

7 (No response)

8 JUDGE BAKER: There are none, and your request  
9 is so granted, Mr. Beshore.

10 MR. BESHORE: Thank you.

11 BY MR. BESHORE:

12 Q You may proceed with your testimony, Dr. Ling.

13 A RBS-Rural Business Cooperative Services is  
14 charged by the Cooperative Marketing Act of 1996 with  
15 conducting economic studies regarding Cooperative  
16 associations. Section 3B2 -- (inaudible) -- of the act  
17 directs it to conduct studies with the economic, legal,  
18 financial, social, and other -- (inaudible) -- corporation  
19 -- corporation and publish the results thereof. Such  
20 studies shall include the analysis of the organization,  
21 operation, financial problems and management of  
22 Cooperative associations. 7 USC Section 49.53.

23 Cost of buying milk supplies -- (inaudible) --  
24 northeast regional market -- (inaudible) -- previous

1 research -- (inaudible) -- is one of the research studies  
2 published by RBS. Looking at the report, we find -- we  
3 find that we -- (inaudible). Cost -- (inaudible) --  
4 estimates.

5 In the 1994 market information -- (inaudible) -  
6 - for the milk marketing orders in the northeast --  
7 (inaudible) -- exhibit No. 12.31 -- milk deliveries --  
8 what kind -- (inaudible) -- indicates that June deliveries  
9 -- (inaudible) -- in September. (Inaudible) -- cycle --  
10 (inaudible) -- processing plants -- (inaudible) -- cycle  
11 of -- (inaudible).

12 Two categories -- (inaudible) -- processing  
13 plant -- (inaudible) -- only experienced by the processing  
14 plant. (Inaudible) -- constitutes seasonal results.  
15 (Inaudible) -- Exhibit Number 12, Figure 2. (Inaudible).  
16 In September and October, those results are --  
17 (inaudible).

18 (Inaudible) -- of taxes, licenses, insurance,  
19 and administrative costs. (Inaudible) -- represented by  
20 the -- (inaudible) -- caused by fluctuating -- prices --  
21 results also includes -- (inaudible) -- the total amount  
22 increase -- (inaudible) -- estimated to be zero --  
23 (inaudible).

24 (Inaudible) -- total cost -- (inaudible) -- are

1 estimated at \$11.6 million and the volume of --  
2 (inaudible) -- is 20 percent of -- (inaudible).

3 This concludes my statement, and I would be  
4 happy to answer questions.

5 JUDGE BAKER: Thank you very much, Dr. Ling.  
6 Are there any questions? Mr. Beshore?

7 BY MR. BESHORE:

8 Q Yes. First of all, Dr. Ling, were you  
9 requested to make yourself available as a witness here by  
10 a party other than -- than my clients?

11 A The administrator of Agricultural Marketing  
12 Service sent a memo to the administrator of the --  
13 (inaudible) -- studies to request that I be able to  
14 testify to assist in -- (inaudible) -- the data and  
15 assumptions of this report. My administrator approved it.

16 Q So your boss told you you were supposed to  
17 come?

18 A Yes.

19 Q Okay. Thank you for -- for appearing. First  
20 of all, in your -- in your report, which has been  
21 identified as -- as Exhibit 12, in the highlights at the  
22 preamble, was there a correction you wanted to note with  
23 respect to the -- the base years of the Northeast market  
24 information that you used?

1           A     Yeah.  The highlights -- the fourth line of  
2     -- (inaudible) -- is based on 1994 through 1999.  That's  
3     when I copyrighted -- (inaudible) -- index.  I used --  
4     (inaudible) -- and -- 12 months -- six months as --  
5     (inaudible) -- at six months.  So I used six -- six years'  
6     data to get data for this for five years -- (inaudible).

7           Q     Okay.

8           A     And I -- all the numbers I used in the -- in  
9     the report, five years.  Only the -- I mean, excuse me,  
10    the -- (inaudible) -- six years.

11          Q     Okay.  Let's -- let's look then at Table 1,  
12    which is the seasonality indices to which you just  
13    referenced.  If you can --

14                   (Pause)

15                   BY MR. BESHORE:

16          Q     The information on Table 1 is the -- a basic  
17    building block for your study here, is it not?

18          A     Now, that's the table that shows the -- the  
19    discrepancies between --

20                   JUDGE BAKER:  Is that Table 1 or Table 5?

21                   MR. BESHORE:  Table 1.  We're --

22                   JUDGE BAKER:  Oh.

23                   MR. BESHORE:  -- trying to rotate the Power  
24    Point back to --

1 JUDGE BAKER: Oh, I see.

2 MR. BESHORE: -- back to Table 1.

3 JUDGE BAKER: Thank you.

4 (Pause)

5 BY MR. BESHORE:

6 A Okay. So the -- this table shows the  
7 discrepancies between milk deliveries and -- and the --  
8 (inaudible).

9 Q So how did you calculate -- these are -- these  
10 are indices as opposed to actual poundages, correct?

11 A That's correct.

12 Q Okay. And how did you calculate the -- the  
13 indices for the "Producer Milk Deliveries" column, January  
14 through December?

15 A Okay. I -- as I said before, I used six years.  
16 That's 72 months' data. I used 12 months -- average to  
17 catch the trend line. That would give you trend line  
18 according to -- trend. And you divide the actual volume  
19 against the trend line. That would -- (inaudible) -- the  
20 trend and that would give you this seasonal variation --  
21 variation in the time series data.

22 Okay. And then for each month, say January  
23 -- you have five years indicated -- if you have at least  
24 five years for January and end up five years for February

1 and five years for March and so on. And then you adjust  
2 it to make sure it's -- add up, obviously, to 100. That's  
3 how the -- the -- (inaudible) -- people -- (inaudible) --  
4 calculate -- (inaudible) -- index.

5 Q Okay. Is it -- so --

6 A The same thing -- (inaudible).

7 Q Okay. So the raw numbers that went into the  
8 indices for producer milk deliveries were the producer  
9 milk deliveries -- by the market administrators for former  
10 Orders 1, 2, and 4 during those years, correct?

11 A That's correct.

12 Q And the fluid demand numbers were the -- the  
13 same numbers for -- for fluid demand numbers or fluid  
14 requirements numbers --

15 A Class 1, Class 1 milk under the three orders.

16 Q During the same time period?

17 A Yeah, that's correct.

18 Q Okay. Now, when you come up with the indices  
19 that are based on six years of -- of data, is it fair to  
20 understand that within those -- those years there may be  
21 years that have spikes that are higher, that have -- that  
22 vary with higher spikes and lower valleys than the -- the  
23 average of the total period of time?

24 A That's correct.

1           Q     So this is -- these indices, which were then  
2           used to calculate the cost of balancing the Class 1 market  
3           are smoother than -- than the real world may be at some  
4           times?

5           A     That's correct.

6           Q     Now --

7           A     The -- the index used in the letter --  
8           (inaudible) -- it's only the -- the index for deliveries  
9           as was -- as used for calculating season -- seasonal  
10          results.

11          Q     Okay. If we go to -- go to Table 2?

12                   (Pause)

13                   BY MR. BESHORE:

14          Q     Now, in Table 2, first of all, Tables 2 and 3  
15          are calculations based on the assumption of a 10 percent  
16          operating reserve and -- and Tables 3 and 4 are comparable  
17          tables but based on a 20 percent operating reserve, is  
18          that correct?

19          A     Tables 2 and 3 are based on an assumption of 10  
20          percent -- operating reserves was 10 percent. Table 4 and  
21          5, under the assumption that -- (inaudible).

22          Q     But in each case, the tables have the same --  
23          same set of columns and similar calculations --

24          A     That's correct.

1           Q     It's just that the reserve assumption is  
2     different?

3           A     That's -- that's correct.

4           Q     Okay. Let's just look at Table 2, then. By  
5     the way, the reserve assumptions you were -- could be  
6     verified -- the correct reserve assumption could be  
7     verified by actual operations in the marketplace, could it  
8     not?

9           A     That's correct. This is just 10 percent, 30  
10    percent, just assumptions. It's -- when I -- I had a  
11    previous report. When I did the previous report, I -- we  
12    used some literature and -- (inaudible) -- different --  
13    (inaudible) -- and how many percent should be operating  
14    reserve. And I -- I just picked two numbers, 10 and 30  
15    percent, to use.

16          Q     Now, if -- if you assume with me, Dr. Ling, for  
17    a moment that data will be presented later in this hearing  
18    on behalf of the ADCNE cooperatives which shows that they  
19    are required to deliver to their distributing plant  
20    customers peak volumes which are 117 percent or 118  
21    percent of the average volumes in terms of daily  
22    fluctuations, would that factual information, assuming  
23    it's -- it's accurate, imply the need for a 20 percent  
24    operating reserve for the fluid market?

1           A     You're talking about if you -- the reserve is  
2     118 percent of --

3           Q     One hundred seventeen or 118 percent, yes.

4           A     Of -- of the monthly average?

5           Q     Of the --

6           A     Monthly daily average?

7           Q     Of the monthly average, yes. Monthly daily  
8     average. The peak daily demand is 117 percent of --

9           A     -- if -- (inaudible) -- if you're talking about  
10    -- (inaudible) -- you're 18 percent above the monthly  
11    average?

12          Q     Yes.

13          A     And it's Class 1 --

14          Q     Demand.

15          A     -- representing Class 1. And on top of that  
16    you need to add the, you know, shrinkage and returns.

17          Q     Okay.

18          A     And under market order -- I think if I -- I  
19    have a Northeast Market Order -- Northeast Order for --  
20    (inaudible) -- when I was employed by market administrator  
21    before 1978. I think shrinkage was two percent. I mean -  
22    -

23          Q     The allowance?

24          A     -- allowed two percent. So it's -- 20 percent.

1           Q     Okay. Okay. With that -- with that assumption  
2     and understanding that Tables 2 and 3 and 4 and 5 are  
3     similar but just with different operating reserve  
4     assumptions, let's go to Table 4, which is the equivalent  
5     table too using 20 percent. Let's look at     -- look at  
6     how you utilized the seasonality indexes to calculate the  
7     -- what's calculated on Table 4, the necessary reserves.

8                     The first two columns are simply the indexes  
9     that we just looked at on Table 1.

10           A     It's a repeat of Table 1, yes.

11           Q     Okay. Now, the third column from the -- from  
12     the left, can you tell us what that information is?

13           A     Okay. It's January -- let's see. January for  
14     five years, 1995 through 1999.

15           Q     The average producer milk deliveries for  
16     January --

17           A     Yeah.

18           Q     Okay.

19           A     February is -- February for 1995 to 1999.

20     That's five -- five year average. That's actually in  
21     Footnote 1, five year average, 1995 to 1999.

22           Q     Okay. And so the fluid demand, the fourth  
23     column, is -- is the same information, a five-year average  
24     demand in those orders?

1 A That's correct.

2 Q Plus the Class 1 utilization?

3 A Class 1 utilization, that's correct.

4 Q Now, the column that's -- that's the fifth  
5 column, "Operating Reserves," how was that column  
6 calculated?

7 A That's simply 20 percent of -- 20 percent of  
8 the previous column.

9 Q So Column 5 is 20 percent of Column 4?

10 A That's correct.

11 Q And assuming that 20 percent is an operating  
12 reserve needed, you are calculating that you'd need an  
13 additional 5700 million in January -- 5700 million pounds  
14 per day in the market as a whole for the reserve?

15 A Yeah. 5,700,000 pounds per day in January and  
16 5 million --

17 Q 5.7 million pounds, yeah.

18 A That's correct.

19 Q Okay. And staying on January then, what is the  
20 seasonal reserve, Column 6? How is that calculated?

21 A Okay. You -- you have to look at the Column 5.

22 (Pause)

23 BY MR. BESHORE:

24 A If -- if you -- if you need to satisfy that

1 -- (inaudible). If you need to satisfy -- (inaudible) --  
2 and also operating reserve, 20 percent operating reserve  
3 or -- (inaudible) -- as that -- that -- if you add -- full  
4 demand and the operating reserve, that's the highest among  
5 the -- (inaudible). And if you -- if you -- (inaudible) -  
6 - can fully satisfy -- 489 and 20 percent operating  
7 reserve, then you don't have any seasonal reserve for  
8 those months. So in October, seasonal reserve is zero.

9 Q Okay.

10 A But when -- and -- go back to Column 1 because  
11 the seasonality of milk deliveries, you're -- you have  
12 higher production in -- month. Suppose you have the same  
13 -- and then you will have seasonal reserve as a result.

14 Q So in order to have the net amount you need for  
15 Class 1 in October, fluid demand and operating reserve, in  
16 order to have that net amount produced from the average  
17 herd of cows in this area, that herd of cows is going to  
18 generate -- going back to January, going to produce an  
19 additional 2.688 million pounds per day which you've  
20 identified as a seasonal reserve?

21 A That's correct.

22 Q And in each month going down, in the spring  
23 flush period, the seasonal reserve generated just by the  
24 same herd that you need for -- to satisfy 100 percent of

1 the fluid market in October, it -- in May and June it will  
2 have generated more than 6 million pounds per day of  
3 seasonal reserve milk?

4 A That's correct. Based on the seasonality  
5 index, Column 1.

6 Q Okay. And if you've got 6 million pounds  
7 seasonal reserve in -- in June, that's 6 million pounds a  
8 day, an excess -- seasonal reserves in June that's not  
9 needed for fluid operating -- for fluid demand or  
10 operating reserve, somebody's got to have facilities or  
11 some way of handling that 6 million pounds a day?

12 A Yeah. That's correct. Also, the operating  
13 reserve too -- operating reserve based on the --

14 Q Okay. Now, the necessary -- the next two  
15 columns have the -- the heading above them, "Necessary  
16 Reserves." And Column 7 is -- is milk volume. How is  
17 that calculated?

18 A That simply is Column 5 and Column 6. You have  
19 that on the table. That's -- that's the necessary.

20 Q Okay. So the necessary reserve is the sum of  
21 the operating reserves and the seasonal reserves on each  
22 month?

23 A That's correct.

24 Q Okay. Column 8 then is -- under "Necessary

1 Reserves" is titled, "Percent Fluid Demand."

2 A That's the -- you divide Column 7 by Column 4.  
3 That's the percentage you get.

4 Q Just a ratio of --

5 A Just a ratio.

6 Q -- Column 7 to Column 4?

7 A That's a ratio of how much reserve you need to  
8 satisfy --

9 Q The net -- the net fluid demand in Column 4?

10 A Yeah.

11 Q So, on the basis of Order 2 -- Order 1, 2, and  
12 4 data for the five-year period of time, in -- in June,  
13 just to make sure you have enough milk supply Class 1  
14 market net in October, you need 45 percent more milk in  
15 June, is that correct?

16 A That's -- yeah, that's correct, according to my  
17 calculation.

18 Q Going then to the last two columns which you  
19 have headed, "Total Reserves," can you tell us what those  
20 are?

21 A Total reserves is just -- I divided Column 3  
22 and Column 4 -- market -- (inaudible) -- my -- my view  
23 that this is -- necessary reserve for the Class 3 and  
24 Class 4 milk is -- (inaudible) -- extra reserves. This

1 milk -- and the market order and they are extra reserve  
2 that can be called upon in case there's a shortage in the  
3 market in this core provision and the market order. And  
4 so in a sense it's -- the source of half of the reserve,  
5 extra reserves.

6 Q Basically, that column is just the -- the total  
7 volume --

8 A Of Class 3 and -- I mean, 3 and 4 --

9 Q The total volumes -- the total volumes of the  
10 orders --

11 A Of less --

12 Q -- less the amounts that you have previously  
13 identified as needed for fluid demand operating reserve  
14 and seasonal reserves? Is that -- am I right?

15 A That's correct.

16 Q Now, is -- does Table 4 then depict the -- the  
17 volumes of milk which need to be handled in order to  
18 balance the Class 1 market in this aggregate marketplace?

19 A That's correct.

20 Q Okay. Let's go to Table 5, then, if we can.  
21 Table 5 is titled, "Estimated Cost of Balancing Necessary  
22 Reserves Assuming 20 Percent Operating Reserves, Northeast  
23 Orders." Again, it's on a monthly basis and there are  
24 seven or eight columns here.

1           The first column is identified as, "Unused  
2           Capacity Caused by Fluctuation in Necessary Reserves."  
3           Can -- and -- and I note in that column you've got a zero  
4           in June. Can you tell us what's -- what's in Column 1?

5           A     If you -- if you go back to Column -- I mean,  
6           Table 4, that's the highest volume -- Column 7. Necessary  
7           reserve -- reserves is highest in June. And so if you  
8           have, I assume, all of the -- (inaudible) -- to take care  
9           of all of those -- (inaudible) -- time of milk.

10          Q     Okay. So --

11          A     So you have -- capacity is zero. Okay. Now,  
12          January I have 3.4 in necessary reserve. And 7.8 minus  
13          3.4 I think should come out to 3.4.

14          Q     Okay.

15          A     So that's -- that's how I calculated it.

16          Q     Okay. So you determined, in -- in going to  
17          Table 5 then, that in June -- on Table 4 in June, the peak  
18          month of necessary reserves, you needed plant capacity to  
19          handle 11.7 million pounds per day?

20          A     That's correct.

21          Q     Okay. And you used the configuration of four 3  
22          million-pounds-a-day butter -- plants to handle that 12  
23          million pounds a day of milk?

24          A     That's correct.

1           Q     Okay.  So when you have the plants which are  
2 going to be full in June, in January you have 3.4 million  
3 pounds of unused plant capacity necessary in June but not  
4 -- but not used in January.  One of the plants is -- the  
5 equivalent of one of the plants is completely idle in  
6 January, correct?

7           A     Just about, yeah.

8           Q     And the unused capacity in the other months is  
9 shown respectively down Column 1 on Table 5, correct?

10          A     That's correct.

11          Q     Now, what is -- what is Column 2, which is  
12 called, "Unused Capacity, Percent of Peak Necessary  
13 Reserves"?

14          A     Okay.  The peak necessary reserve volume is  
15 11.8.  And your January unused capacity is 3.4 million.  
16 So 3.4 million is 39 percent of 11.8.  The numbers --  
17 (inaudible).

18          Q     So that's just a ratio --

19          A     That's a ratio of -- to the highest capacity  
20 you need to -- (inaudible).

21          Q     And again, in June at the peak of the flush  
22 when you need all the plant capacity and it's full, it's  
23 zero unused?

24          A     That's correct.

1 Q Let's go to Column 3, "Fixed and Overhead Costs  
2 of Reserve Balancing." And you -- you touched on this in  
3 your -- in your prepared testimony. Can you explain how  
4 that -- how those numbers were calculated?

5 A Fixed and overhead is -- that's included -- to  
6 build a new plant, say 3 million pound a day plant, plus  
7 the -- I think I say licenses -- (inaudible) -- overhead.

8 Q The body of your publication details the -- the  
9 line items that go into that calculation, correct? That go  
10 into that estimate?

11 A Yeah. That includes -- just a -- (inaudible) -  
12 - cost of -- (inaudible) -- building, incinerator, and  
13 equipment -- equipment and estimated overhead and taxes,  
14 licenses, insurance, and reserve cost.

15 Okay. I used 28 million for a new plant for 3  
16 million pounds a day. This is a very conservative --  
17 number because some new plants now for that volume, to my  
18 knowledge, cost -- are costing 40 and 50 million --  
19 million pounds -- million dollars.

20 The reason I used \$28 million for the plant is  
21 they just started in 2000 -- if you recall, between late  
22 1990s to -- up to now -- up to now, not -- to my  
23 knowledge, no -- no -- no new -- (inaudible) -- was built  
24 in this country. And I -- there were some extensions but

1 no -- (inaudible) -- plant. So I didn't -- I couldn't get  
2 the -- (inaudible) -- more up-to-date numbers. And 20  
3 million was based on a study I did for the co-op that was  
4 building a plant back in 1994.

5 I could have used conversion in the releases to  
6 -- you know, to adjust it to a more current number but I  
7 might -- if I did that, if I had done that, I might be  
8 accused of inverting cost. But 28 million was a -- number  
9 I got from consulting with a new company.

10 So if my number is low, you can plug in your  
11 own numbers and calculate your own cost.

12 Q But it was -- it was a firm number that you had  
13 --

14 A Back in 1994.

15 Q -- in '94, and in your judgment it represents a  
16 fairly conservative cost for the present day of this plant  
17 capacity?

18 A That's correct.

19 Q From that you came up with what figures?

20 A Twenty-nine percent of the capacity. And -- if  
21 you have four plants with an estimated --

22 (Pause)

23 BY MR. BESHORE:

24 A Those four plants -- let me see.

1 (Pause)

2 BY MR. BESHORE:

3 A Okay. A plant -- if you opened at full  
4 capacity, 100 percent of the overhead and fixed cost is  
5 assumed by -- (inaudible). Okay. If you -- so -- and  
6 there's unused capacity that -- for January is 29 percent.  
7 And just -- (inaudible) -- the overhead -- 29 percent of  
8 the overhead and fixed cost to give you unused capacity.

9 Q Twenty-nine percent of the -- of --

10 A Of the fixed and overhead --

11 Q Cost per month?

12 A Per month is assigned to the unused capacity.

13 Q Okay. And then each month you just assign --  
14 the calculated reserve percentage in Column 2, the  
15 calculated unused capacity, percent of the necessary  
16 reserves in Column 2, you apply to the fixed and overhead  
17 costs of the -- of the plant and that gives you Column 3?

18 A That's correct.

19 Q And of course, in June when the plant's full,  
20 there's zero cost attributed to the unused capacity  
21 because it's all being used?

22 A That's correct.

23 Q And the -- the sum of the columns on an annual  
24 basis then for 12 months is just in excess of \$3 million,

1 as you reported in your -- your summary earlier?

2 A That's -- that's correct.

3 Q Now, the remainder of the columns of Table 5  
4 here have a super -- have a heading over all of them that  
5 is, "Plant Cost Increases on the Actual Processed Volume  
6 Caused by Unused Capacity." I think you explained that in  
7 your summary, but are you -- you're saying that every  
8 pound of product -- when your plant isn't running full, it  
9 costs you more money to produce every pound of product per  
10 -- per unit than it would if it's full?

11 A That's correct. Because the cost of the plant  
12 can be -- the direct cost of the plant can be --  
13 (inaudible) -- variable costs. But a lot of them --  
14 (inaudible) -- the cost of the -- (inaudible). If you --  
15 (inaudible) -- fixed costs -- (inaudible) -- variable  
16 costs -- (inaudible) -- would be higher.

17 Q Okay. Now, you detail that in your -- in your  
18 report, which is Exhibit 12. And I don't want you to go  
19 through it and, you know, repeat that methodology. But  
20 just understand the concept that these are cost increases  
21 on the actual processed volume because of the unused  
22 capacity?

23 A That's correct.

24 Q Okay. Now, the first column you calculated per

1 pound of butter or powder, you have a Footnote 1 which  
2 says, estimated to increase by 0.1 cent per pound of  
3 product per percentage of point of unused plant capacity.  
4 Can you explain how you derived that -- that rate of  
5 increased cost?

6 A Back in 1993, I did -- me and my assistant did  
7 a study on -- based on the -- use of -- cost data. And --  
8 (inaudible) -- on the cost of -- (inaudible) -- butter,  
9 powder, and cheese and try to see if it's -- what's --  
10 what effect the cost -- cost would give me. And we have  
11 various different variables in there. And it's --  
12 (inaudible) -- capacity -- (inaudible) -- plant and some  
13 other variables.

14 And the -- the -- the -- reason associated with  
15 capacity -- (inaudible). And that means for -- it -- this  
16 can be interpreted as -- (inaudible) -- if you are -- if  
17 you are -- (inaudible) -- if you -- (inaudible) -- used by  
18 one percent -- (inaudible) -- cost per unit of product by  
19 0.1 cent. And that's pretty consistent across this type  
20 of -- (inaudible) -- cheese plants.

21 So I -- instead of going to -- (inaudible) --I  
22 just see how -- how it affected -- how the variation in  
23 capacity used affects end cost. I just used the -- used  
24 the -- the number for simplicity purpose, I guess.

1 Q So you used the factor that you had derived  
2 from previous studies of multiple plant operations?

3 A Yeah, for nine years in time.

4 Q Over a nine year operating period in time?

5 A And the data cover 1993 to -- 1983 to 1991.

6 Q Okay. And in your -- in your judgment in your  
7 field, was that a reliable number to use to estimate the  
8 cost of balancing in this marketplace?

9 A I believe so. Otherwise I wouldn't have used  
10 it.

11 Q Now, another -- we could say that 0.1 cent per  
12 pound -- per percentage point of unused plant capacity is  
13 one cent per pound for each 10 percent of unused plant  
14 capacity?

15 A That's correct.

16 Q Okay. So when you -- looking in the January  
17 line then, when you've got 29 percent of capacity not used  
18 because the milk's not available, it's going to the Class  
19 1 market, that translates into a 2.9 cent per pound  
20 increased cost over --

21 A For the remaining --

22 Q -- for the remaining -- and -- and the same  
23 -- the same on down the line through --

24 A For every month.

1           Q     And again, in June when the plant's full, the  
2     costs are what -- what they are and there's nothing  
3     attributed to the cost of balancing?

4           A     That's correct.

5           Q     Okay. Going to the next column, "Converted to  
6     Per Hundredweight of Milk." And it has Footnote 2 on it:  
7     assuming per hundredweight of milk generates 4.48 pounds  
8     of butter and 0.13 pounds of nonfat dry milk can be made.  
9     Are those accepted yield factors in -- for producer milk  
10    of average test?

11          A     That's for long time has been used in CCC's  
12    computation for the price of bulk whole milk.

13          Q     Okay. So they're the -- the CCC yield factors  
14    that --

15          A     That's correct.

16          Q     -- have been used for many years. And you used  
17    -- used those yield factors to convert the Column 4 costs  
18    in cents per pounds to cents per hundredweight?

19          A     That's correct.

20          Q     Okay. So January, every hundredweight of milk  
21    that was actually put through the plant, the cost because  
22    there was unused plant capacity was 36 cents greater than  
23    it would have been in June when the plant was full?

24          A     That's correct.

1 Q And the same thing down -- straight down  
2 through the fall months when it's even emptier. In  
3 September, the costs per hundredweight are 62 cents per  
4 hundredweight of actual through but greater than they are  
5 in June, correct?

6 A June is --

7 Q June is zero, so it costs 62 cents more per  
8 hundredweight --

9 A Yeah, that's correct.

10 Q -- in September, 63 cents more per  
11 hundredweight in October?

12 A Mm-hmm. That's correct.

13 Q Now, Column 6 is called, "Per Daily Necessary  
14 Reserve Volume, Dollars Per Day." Can you --

15 A That's the 26 cents times the -- let's see.

16 (Pause)

17 BY MR. BESHORE:

18 A I believe it's Column 5 times the --

19 (Pause)

20 BY MR. BESHORE:

21 A -- necessary reserve in Table 4.

22 Q That's -- it's Table 5 of Table -- Column 5 of  
23 Table 5, the cents per hundredweight, multiplied times the  
24 Column 7. the milk volume of necessary reserves in January

1 on Table 4, correct?

2 A I think that's correct.

3 Q So in -- in January then, the cost -- the --  
4 the cost attributable to the necessary reserve volume was  
5 \$30,000 -- 30,000 period and \$36 per day?

6 A That's correct.

7 Q In the market. And of course, in June when  
8 plants were full, there's no cost attributed to that --  
9 balancing need but in September and October, it -- the  
10 cost increases to in excess of \$37,000 per day?

11 A That's correct.

12 Q Cost of balancing the entire market?

13 A That's correct.

14 Q And again, Table -- that Column 6 is volume  
15 -- is the rate in Column 5 of Table 5 times the volume in  
16 Column 7 of Table 4, correct?

17 A Can you repeat that again?

18 Q Yes. Table 6 on -- Column 6 of Table 5 is a  
19 product of the rate in Column 5 of Table 5 times the  
20 volume of necessary reserves in Column 7 of Table 4?

21 A That's correct. That's correct.

22 Q Now let's go to Column 6. Column 6 in Table 5  
23 is the dollars per month --

24 A No, that's Column 7.

1 Q I'm sorry. Per -- Column 6 is per monthly  
2 necessary reserve volume.

3 A That's the title -- (inaudible). Yeah. Okay.  
4 Go ahead.

5 Q Six is per day, 7 looks like 6. No wonder I  
6 was confused. Okay. Seven is dollars per month. So it's  
7 the per day times the number of days per month, is that  
8 correct?

9 A That's correct.

10 Q Okay. And then the final column, Column 8?

11 A That's the total of Column 3 and Column 4.  
12 Column 7, I mean.

13 Q Total reserve balancing cost?

14 A That's the -- total fixed cost and -- and the  
15 total cost of -- (inaudible) -- total -- cost for  
16 balancing.

17 Q And in January, the cost -- federal reserve  
18 balance and cost for the market is \$1,232,707 for January?

19 A That's correct.

20 Q And the annual cost then, Table 5, the sum at  
21 the bottom of Column 8 is \$11,567,210, right?

22 A That's correct.

23 Q So your conclusion then that -- is that the  
24 cost of balancing milk supplies, the necessary reserves

1 for the Class 1 market in the Northeast, assuming a 20  
2 percent operating reserve is required, is \$11.567 million?

3 A That's correct.

4 Q Was your study, which has been marked as  
5 Exhibit 12, subjected to review of --

6 A It's Exhibit 12.

7 Q Exhibit 12, I'm sorry. Was it reviewed by  
8 other persons prior to publication?

9 A We have an individual -- (inaudible). I'm the  
10 -- I'm the author of the report, so we have to go through  
11 Department -- (inaudible) -- process.

12 Q And the methodology that's used in that Exhibit  
13 12, your study, is that methodology that -- similar  
14 methodology has been utilized in prior -- prior studies  
15 and has been recognized as -- as an accepted methodology  
16 at least for identifying the reserve balance and cost?

17 A I think I'm the first one to -- (inaudible).

18 Q But you have published some prior studies and  
19 you've cited --

20 A That's -- (inaudible).

21 Q -- references.

22 MR. BESHORE: May I have --

23 (Pause)

24 MR. BESHORE: Thank you very much, Dr. Ling. I

1 have no other questions on direct examination.

2 JUDGE BAKER: Thank you, Mr. Beshore. Are  
3 there any other questions of Dr. Ling? Yes, Mr.  
4 Rosenbaum?

5 MR. ROSENBAUM: Your Honor, it's 5:40. I don't  
6 know whether you want to continue at this point. I think  
7 it's -- I know Your Honor had indicated you would be  
8 ending between 5:30 and six, and I don't think we're going  
9 to finish with Dr. Ling today.

10 JUDGE BAKER: Well, what -- what are the wishes  
11 -- (inaudible) -- Mr. Rosenbaum?

12 MR. ROSENBAUM: I'd prefer to start in the  
13 morning.

14 JUDGE BAKER: Oh, would you prefer to start in  
15 the morning? Are there others who wish to question Dr.  
16 Ling? Mr. Vetne. Would you all prefer -- Mr. English.  
17 Do you want to do it now or do you want to start in the  
18 morning?

19 MR. BESHORE: Your Honor, may we inquire of Dr.  
20 Ling what he might prefer?

21 JUDGE BAKER: That's a good idea, yes.

22 (Laughter)

23 JUDGE BAKER: Dr. Ling?

24 THE WITNESS: If I can help people in this

1 matter -- (inaudible) -- I'll be happy to come back.

2 JUDGE BAKER: Very well. Apparently --  
3 (inaudible) -- we're going to be starting tomorrow morning  
4 with Dr. Ling.

5 Before we recess this evening, I'd like to ask,  
6 is there anyone in the room who wishes to give testimony  
7 tonight and who will not be here tomorrow? This is an  
8 opportunity for anyone to testify who will not be here  
9 tomorrow.

10 (No response)

11 JUDGE BAKER: Let the record reflect that there  
12 is no response.

13 It is 5:45, and according to the wishes of the  
14 participants then, we'll recess until 8:30 tomorrow in  
15 this room. Thank you all.

16 (Whereupon, at 5:45 p.m., on Tuesday, September  
17 10, 2002, the proceedings were adjourned, to reconvene at  
18 8:30 a.m., on Wednesday, September 11, 2002.)

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